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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1222

NORMA RUUD, ROYCE RUUD, and WILLMAR NURSING HOME, INC.,

Petitioners,

vs.

STATE OF MINNESOTA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., pray that a writ of certiorari issue to review the judgment of the Supreme Court of Minnesota entered in the above-entitled case on December 2, 1977.

I.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota is reported at — Minn. —, 259 N.W.2d 567 (1977), and is printed in Appendix A hereto, *infra*, page A-99. The Order

of the Supreme Court of Minnesota denying a rehearing is printed in Appendix A hereto, *infra*, page A-127. The Judgment of the Supreme Court of Minnesota is printed in Appendix A hereto, *infra*, page A-129. The Judgment of the District Court of Kandiyohi County, Minnesota, is printed in Appendix A hereto, *infra*, pages A-89-99.

II.

JURISDICTION

The Supreme Court of Minnesota filed its opinion on October 21, 1977. A timely Petition for Rehearing was denied on December 2, 1977. The Judgment of the Supreme Court of Minnesota was entered on December 2, 1977 (Appendix A, *infra*, page A-129). The jurisdiction of the United States Supreme Court is invoked under United States Code, Title 18, Sec. 1257, 62 Stat. 929.

III.

QUESTIONS PRESENTED

1. Were search warrants which authorized searches for records and documents of Willmar Nursing Home, Inc., without practical limitation, at the corporate offices of the corporation, at the home of Royce Ruud and Norma Ruud, and for records and documents of all other businesses owned and controlled by Norma Ruud and Royce Ruud, so broad and sweeping in their authority that they violated the Petitioners' rights under the Fourth and Fourteenth Amendments of the Constitution of the United States?

2. Did the conduct of the searches, by two peace officers who did not make the determination as to what

was to be seized, and by an assistant attorney general, a special assistant attorney general, the audit director and an auditor of the Minnesota Department of Public Welfare, who did determine what was to be seized and who admittedly seized documents having no relevance to the issues, and who searched the entire home of Petitioners, beyond the scope of the warrant, violate Norma and Royce Ruuds' rights under the Fourth and Fourteenth Amendments of the Constitution of the United States?

3. Was there probable cause for issuance of a search warrant against the corporate offices where the supporting affidavit relied, in part, on the statements of anonymous former employees, and in part, on unsworn testimony or testimony not of record?

4. Was there probable cause for issuance of a search warrant against Norma and Royce Ruuds' home where the supporting affidavit, identical to the affidavit supporting the warrant for a search of the corporate offices, was based, in part, on the statements of unnamed former employees, and, in part, on unsworn testimony or testimony not of record?

IV.

STATUTES INVOLVED

Amendment IV of the United States Constitution. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Section I of Amendment XIV of the United States Constitution. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1257 of Title 28, U.S. Code, 62 Stat. 929. State Courts; Appeal; Certiorari. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

(3) By writ of certiorari, . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

Sections 609.05, 609.465, and 609.52, Minnesota Statutes 1974, the criminal code provisions under which Petitioners were convicted are set out in Appendix A, *infra,* page A-129.

Relevant sections from Chapter 626, Minnesota Statutes 1974, relating to searches and seizures, are set out in Appendix A, *infra,* pages A-131-36.

Rule 11 of the Minnesota Rules of Criminal Procedure, relating to omnibus hearings, are set out in Appendix A, *infra,* page A-136.

V.

STATEMENT

Petitioner Willmar Nursing Home, Inc., owns a nursing home in Willmar, Minnesota. Except for one share owned by their children, Petitioners Norma and Royce Ruud own all of the stock in the corporation. Norma Ruud is the administrator of the nursing home and the secretary-treasurer of the corporation. Royce Ruud is the assistant administrator of the nursing home and the president of the corporation. Royce Ruud is also engaged in farming enterprises.

In 1972, the Minnesota Department of Public Welfare (hereinafter DPW) adopted a regulation, known as Rule 49, containing a complex formula for determining public reimbursement of nursing home care rendered to welfare recipients. The Rule requires nursing homes to submit to DPW annual cost statements, summarizing patient-related costs according to various categories set forth in the 24-page Rule and in the 22-page cost reporting form. On the basis of these reports, DPW determines a reimbursement rate for welfare recipients for the following year.

The annual cost statements are audited in the offices of DPW. Field audits, similar to IRS audits, are also undertaken, not universally, but on a random basis determined by DPW.

In 1974 Robert Rau, DPW's audit director, determined to have a field audit made of Petitioners' nursing home, and on December 10, 1974, sent a DPW auditor, Raymond Otto, to Willmar to make the audit. Otto worked on the field audit until January 9, 1975, and reported to Rau that he suspected that not all costs reported on the annual cost statement were patient-related. After Norma

Ruud responded to a special questionnaire submitted by DPW, her answers therein were compared with Otto's audit records. Rau then took up the matter with Thomas Fabel, assistant attorney general, and Barbara Gill, special assistant attorney general, both assigned to DPW. Together they determined to seek a search warrant and collaborated in its preparation.

On August 28, 1975, Rau, Otto, Fabel, and Gill appeared at the offices of the Kandiyohi County Attorney with prepared affidavits and search warrants which were pertinent only to a search of the nursing home offices and not the Ruuds' home. The local magistrate, Allan Buchanan, was summoned to the local prosecutor's office and the documents were presented to him. Audit Director Rau engaged in what he called a "dialogue" with the magistrate. He was not sworn until ten or fifteen minutes after the "dialogue" started. No record of the sworn or unsworn statements was made and no transcript thereof exists.

It appears from the official records that a decision was made at this time also to search the corporation's "office and record storage place" located in the Ruuds' home. Copies of the prepared affidavit and search warrant were altered to name the Ruud home. Now there were two sets of affidavits and search warrants, identical in all respects except for named location to be searched. During the proceedings, two officers of the Willmar Police Department, were also present. The warrants, addressed to one of them, directed him to seize various materials. During these proceedings, the names of Fabel, Gill, Rau and Otto and one additional police officer were, at the instruction of the prosecutor and magistrate, typed in the body of the warrants. (*See*, the affidavit and search warrant for the corporate offices, Appendix A, *infra*, pages A-1 and A-7, respectively, and the affidavit and search warrant for the offices and record storage places in the Ruuds' home, Appendix A, *infra*, pages A-11 and A-17 respectively.)

Having procured the warrants, the search party split up. One group, composed of a police officer, the assistant attorney general (Fabel), and the audit director (Rau) proceeded to the Ruud home, where Petitioner Royce Ruud was at the time. The other group, composed of the special assistant attorney general (Gill), the field auditor (Otto), and another police officer went to the nursing home. Both groups arrived at their respective destination at about six o'clock P.M. on August 28. The searches continued until two o'clock in the morning of the following day. The search of the Ruud home continued until about ten-thirty in the evening. During the search of the home Fabel searched every single room in the home, including the basement and the garage, even though the warrant specified that only the offices and record storage places were to be searched.

During the search the police officer to whom the warrants were specifically addressed, was in a passive role and made few, if any, decisions as to what was to be taken. The other police officer was there, according to his own testimony, only to protect the evidence. He did not search anything, and made no decisions as to what the warrants permitted to be taken. The decisions as to what was to be taken were made by Rau, Otto, Fabel, and Gill, sometimes individually and sometimes conferring together as to what was to be included under warrant.

These officials seized a massive amount of material, packed it in boxes, and loaded it into a station wagon

which was then filled to capacity. The material was then removed to St. Paul, despite the fact that the search warrants required the material to be turned over to a local police officer. The inventory of material taken appears at the Appendix A, *infra,* pages A-21-28.

Anticipating that the State would present the material seized to the grand jury, Petitioners instituted an action in the Kandiyohi County District Court, pursuant to Minnesota Statutes, Sec. 626.21 (Appendix A, *infra,* page A-135) for the suppression of the material on the grounds that the search and seizure violated the constitutional rights of Petitioners. The Court issued a Temporary Restraining Order and set the matter for hearing on Petitioners' Motion for Temporary Injunction, which was heard on September 23, 1975. The Court suppressed material seized under Paragraph 13 of the search warrants, but denied the Motion for Temporary Injunction and vacated the Temporary Restraining Order. Appendix A, *infra,* page A-29.

The seized material was presented to the grand jury, which on September 30, 1975, indicted all Petitioners on one count of presenting false claims to a public body, under Minnesota Statutes, Sections 609.465 and 609.05, and two counts of theft under Minnesota Statutes, Section 609.52, Subd. 2 (3). (Appendix A, *infra,* page A-34). The indictment was amended at trial to drop one charge of theft against each of the Petitioners.

An Omnibus Hearing, pursuant to Rule 11 of Minnesota Rule of Criminal Procedure, was held before Judge C. A. Rollоff of the Kandiyohi County District Court on November 12 and 13, 1975, at which time Petitioners presented motions to suppress the evidence seized. (Appendix A, *infra,* page A-42). The Court denied the motions (Appendix A, *infra,* page A-82), and quantities of the seized material were introduced into evidence over the objection of Petitioners.

Petitioners were convicted, given probationary sentences, and fined. (Appendix A, *infra,* pages A-89-99).

Petitioners moved for judgments of acquittal or for new trial, presenting arguments that their constitutional rights were denied them by the use of the seized material. The Court denied all motions. On appeal, the Minnesota Supreme Court affirmed. Petitions for rehearing were presented to the Minnesota Supreme Court and were denied.

VI.

REASONS FOR GRANTING CERTIORARI

A. The Minnesota Supreme Court's decision which upholds broad and general search warrants, even though they could have been drafted with particularity, is contrary to decisions of this Court.

We respectfully submit that the search warrants constituted, both in their intent and in their effect, general warrants, in which all records and papers of the corporation and of the Ruuds become exposed to the intrusion resulting from these unconstitutional documents.

For example, Item 10 of the listed items in each warrant (Appendix A, *infra,* pages A-9 and A-19) provides that "*All* records, agreements, or *other* writings which identify the person(s) who have conspired together to obtain funds from *a* public body through fraud, deception, misrepresentation, or theft . . ." could be seized. (Emphasis supplied) This blanket authority to rummage around

in corporate and personal records is, we respectfully submit, a violation *per se* of both the spirit and the letter of the Fourth Amendment. These warrants authorized a *general* search for evidence of *any* crime involving *any* number of persons at *any* time after August 1, 1971. Such a general search is the very evil which the Fourth Amendment was designed to prevent.

Sections 8 and 9 of the warrants (Appendix A, *infra,* pages A-9 and A-19), which emphasize *all* records, *other* documents and *undertermined* persons transacting business with the nursing home and the Ruuds, and which refer to an undefined wrongfulness, contain the same pernicious all-embracing sweep.

Items 11 and 12 (Appendix A, *infra,* pages A-9 and A-19), do not attempt to set any limits as to either time or circumstance and are all-encompassing grants or authority to pry into all transactions of the nursing home and of Norma and Royce Ruud.

Item 13 was so egregious that Judge Thomas Stahler, in the action to suppress, ruled it beyond the pale of the law, and expressed serious misgivings about the rest of the warrant, but left that for determination later in the light of *United States v. Calandra,* 414 U.S. 338, 38 L.Ed. 2d 561, 94 S.Ct. 613 (1973), which he read to prohibit a court from interfering with the grand jury consideration of evidence which might not even be admissible in the later trial. (Appendix A, *infra,* page A-31).

The generality and overly broad scope of the warrants are further demonstrated in the listing of places to be searched:

> 1) The offices and record storage places of Willmar Nursing Home, Inc., at the corporate offices;

> 2) The offices and record storage places of Willmar Nursing Home, Inc., at the home of Royce Ruud and Norma Ruud;
>
> 3) The offices and record storage places of all other businesses owned and controlled by Norma and Royce Ruud at the corporate offices of Willmar Nursing Home, Inc.; and
>
> 4) The offices and record storage places of all other businesses owned and controlled by Norma and Royce Ruud in their own home.

The intent to secure a general warrant is manifest in the testimony of Rau. In preparing the warrants, Rau actually outlined the specific items he sought; despite this specific knowledge of desired materials, Rau then requested a warrant that went far beyond the proper and specific objects of his concern. (Appendix A, *infra,* pages A-46-55).

The behavior of the search party demonstrates that the warrants were treated as general warrants. The peace officers in the group exercised no real control of the searches (Appendix, *infra,* pages A-71, 75, 79). If a file contained just one paper thought to be incriminating, the entire file was taken (Appendix, *infra,* page A-59). Files obviously unrelated to the nursing home and its affairs, eg., "Farm Soc. Sec. on Farm Labor", "Farm Income-1973", "Farm Expense-1973", "Farm Expense-1974", "Farm Expense-1972", "Farm Income-1972", "Randy-Misc. Papers", "Betty-Letters", "Goats", "Linda-Miscellaneous", "Silva Mind Control", and "Miracle Maid Cookware", were taken from the Ruud Home. Appendix A, *infra,* pages A-25-27).

The Minnesota Supreme Court asserted that the drafting of a particularized warrant presented an insurmountable obstacle in light of the large amount of material

available from the field audit. The Court has suggested that the time and expertise necessary would constitute an unreasonable burden. (Appendix A, *infra*, page A-111). But the Court's conclusion was wrong given the fact that Rau had a very clear picture of what documents he had in mind (Appendix A, *infra*, pages A-46-55). The field auditor's worksheets and memoranda disclosed a readily available source of specificity. Time was ample, from January 9, 1975, when the field audit was completed, to August 28, 1975, when the representatives of DPW and the Attorney General's office appeared at the office of the local prosecutor to secure the warrants. Where the Minnesota Attorney General's office with at least two lawyers assigned to DPW was involved all the expertise necessary to prepare proper warrants was available.

We have, therefore, before us, warrants that permitted general searches of "offices and record storage places of Willmar Nursing Home and all other businesses owned and controlled by Norma and Royce Ruud" at both the corporate offices and at their own home. These warrants permitted a general search for all records and documents indicating knowledge of purchase transactions, of receipt of goods, services or funds as a result of *unspecified* wrongful acts, of *undefined* conspiracy against an *undefined* public body through *undefined* criminal acts. These warrants permitted a general search for *all* records and documents pertaining to *all* properties owned by Petitioners Norma Ruud and Royce Ruud personally or by any corporation or partnership controlled by them. Under such general warrants, no record and no document of Petitioners would escape the grasp of the State. These warrants, therefore, run afoul of the constitutional prohibition against general warrants.

We respectfully submit that the disposition of this case on this issue by the Minnesota Supreme Court is not in accord with the principles enunciated by this Court in *Andresen v. Maryland*, 427 U.S. 463, 49 L.Ed. 2d 627, 96 S.Ct. 2737 (1976); *Stanford v. Texas*, 379 U.S. 476, 13 L.Ed. 2d 431, 85 S.Ct. 506, reh. den. 380 U.S. 926, 13 L.Ed 2d 813, 85 S.Ct. 879 (1965); see *Hale v. Henkel*, 201 U.S. 43, 50 L.Ed. 652, 26 S.Ct. 370 (1906).

B. The Minnesota Supreme Court decided in a way contrary to decisions of this Court when it upheld a search which, without authorization, intruded into the private home of Petitioners', a search which was conducted by unauthorized persons, and a search which admittedly resulted in the seizure of irrelevant documents.

It is elemental law with respect to searches and seizures that a search warrant is to be the guide for the officer conducting the search, and it is to be so clear that no discretion is permitted the officer in executing the warrant. *Marron v. United States*, 275 U.S. 192, 72 L.Ed. 231, 48 S.Ct. 74 (1927). In this case, this salutory principle of law was violated time and again.

In the first place, the peace officers themselves appeared to be only nominally involved in the search. One of them felt he was there in some kind of supervisory capacity and the other felt he was there to protect the evidence. (Appendix, *infra*, pages A-68, 79). Neither of them appeared to make the determination from the warrants as to what could legitimately be taken. That task was left to the investigative arm of the State, the DPW people and the assistants attorney general, who were a long way from being responsible for the proper execution of a search warrant.

The rights of the Ruuds in their own home were violated by a thorough search of the whole house, which clearly went beyond the scope of the warrant. Material was taken from a bedroom (Appendix A, *infra*, page A-80). Royce Ruud was given the hollow option of accompanying the searcher, or of permitting him to rummage around the house alone. (Appendix A, *infra*, page A-79).

Gill, a special assistant attorney general who assisted in drafting the warrant, was nevertheless confused as to the nature of documents she was looking for (Appendix A, *infra*, pages A-72-77). The DPW people huddled to make determinations as to what they could take (Appendix A, *infra*, pages A-64, 74) and resolved questions in favor of the State. The whole pattern suggests that Royce Ruud was correct when he concluded after reading the warrant, that "they could take about anything they wanted to". (Appendix A, *infra*, page A-82).

C. The Minnesota Supreme Court decided contrary to decisions of this Court when it upheld the affidavits in support of the search warrants even though the affiant stated many conclusions rather than facts, and even though the affiant's informants were not demonstrably reliable.

For about half of the thirty minute proceedings before the magistrate, statements were made by persons who were not under oath. Testimony under oath was not recorded and was not transcribed. There is therefore no showing that any testimony outside the affidavits can be relied on. One can only speculate as to whether the judicial officer made his determination on sworn testimony, or came to his conclusion in the "dialogue" with Rau before Rau was sworn. (Appendix A, *infra*, page 56).

Under *Aguilar v. Texas*, 378 U.S. 108, 12 L.Ed. 2d 723, 84 S.Ct. 1509 (1964), an affidavit may support a search warrant only if two requirements are met. First, the affidavit must contain sufficient underlying facts so a magistrate may draw his own conclusions as to whether probable cause exists to believe that a crime has been committed. Second, the affiant's source of information and facts must be reliable. The magistrate must be able to make a determination from facts, not from conclusions, that a crime has been committed and that there is probable cause to believe that a defendant committed the crime. The facts necessary to prove the crimes alleged in this case were (1) the payment by the corporation for goods and services that were not related to patient care; (2) the inclusion of these payments in the DPW Rule 49 cost report; (3) the inclusion of such payments in the cost reports with the intention to deceive and defraud the State.

While facts were shown that fulfilled the first of these requirements, those facts, in and of themselves, were not enough. It is not a crime *per se* for a corporation to pay for goods and services for its owners, as closely-held corporations generally do, making adjustments at a later date. There are no facts set forth in the affidavits to meet the second requirement: that the items mentioned were included in the cost report. Rau's statement merely concluded that such was the case. The factual comprehensive recital demanded by *Aguilar* was not given the magistrate. Nor was the third requirement met. There is nothing in the nature of a comprehensive factual presentation that would permit the magistrate, and not Rau, to draw the proper conclusion. Rau, in his later testimony at the Omnibus Hearing, did suggest that he was concerned about

the possible existence of corporate adjustment accounts which would cancel out personal expenditures. His affidavit, however, fails completely to show any facts that demonstrated the lack of such accounts or that it had in fact been thoroughly searched for.

The affidavits fail also with respect to the second requirement of *Aguilar*, that the affiant must set forth circumstances which demonstrate that the informant and the informant's information are reliable. The affidavits on their face disclose that some of the information came from employees who wished, for some reason not set forth, to remain anonymous. Although the possibly invidious motive of such employees to lie or exaggerate was noted by the Minnesota Supreme Court (Appendix A, *infra*, page A-108), the Court brushed this problem off with the statement that the affidavits stated probable cause without the additional information supplied by the unnamed informants. (*Ibid.*). The Minnesota Court's conclusion is entirely without foundation, since there appears nowhere in the affidavits or elsewhere anything to delineate which information relied on came from Rau, from Otto, from unnamed informants, or from what may have been disgruntled former employees. This is a significant deviation from the standards this Court has set forth in *Aguilar*. Because the seized evidence was admitted when it should have been suppressed, Petitioners were convicted.

CONCLUSION

For the reasons set forth above, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

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APPENDIX A

APPLICATION FOR SEARCH WARRANT AND SUPPORTING AFFIDAVIT

ROBERT RAU, being first duly sworn upon oath, hereby makes application to this Court for a warrant to search the premises hereinafter described, for the property and things hereinafter described.

Affiant knows the contents of this application and supporting affidavit, and the statements herein are true of his own knowledge, save as to such as are herein stated on information and belief, and as to those, he believes them to be true.

Affiant has good reason to believe, and does believe, that the following described property and things, to-wit:

1. All records and document evidencing purchases of goods and services made by any past or present agent, employee or owner of Willmar Nursing Home, Inc., 500 Russell Street, Willmar, Minnesota, from August 1, 1971 to the present.

2. All records and documents evidencing the identity of the person(s) responsible for making purchases of goods and services for Willmar Nursing Home since August 1, 1971 to the present.

3. All records and documents indicating the identity of any person(s) who made a purchase of goods or services in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

4. All records and documents indicating the identity of the person(s) who received goods or ser-

vices purchased in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

5. All records and documents of cash or credit receipts and disbursements received or made by Willmar Nursing Home, its agents, employees or owners, since August 1, 1971 to the present.

6. All bookkeeping and accounting records of Willmar Nursing Home which relate to the information required or provided upon each D.P.W. Rule 49 report or attachments, submitted to the Minnesota Department of Public Welfare or Kandiyohi County Welfare Department by Willmar Nursing Home since August 1, 1971 to the present.

7. All records of inventory and cost analysis prepared or generated in relation to the determination of expenses incident to patient care at Willmar Nursing Home since August 1, 1971 to the present.

8. All records, correspondence and other documents indicating who had knowledge of person(s) purchasing and/or receiving goods and services obtained in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

9. All records, correspondence, memoranda and other writings or things indicating who wrongfully received goods, services or funds from Willmar Nursing Home since August 1, 1971 to the present.

10. All records, agreements or other writings which identify the person(s) who have conspired to-

gether to obtain funds from a public body through fraud, deception, misrepresentation or theft since August, 1971 to the present.

11. All records, agreements or other writings which identify the person(s) who have a direct interest in the assets and liabilities of Willmar Nursing Home.

12. All audits, bookkeeping reports, and ledgers showing any debits or credits of Willmar Nursing Home.

13. All bookkeeping, accounting, tax, payroll and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons, other than the Willmar Nursing Home.

are at the premises described as follows:

> the offices and record storage places of Willmar Nursing Home, Inc., * * located at 500 Russell St., Willmar, Minnesota * * and all other businesses owned and controlled by Norma and Royce Ruud,

upon the grounds the property above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime, to-wit: violations of Minn. Stat. §609.-465 and Minn. Stat. §609.52 (1973 Supp.).

In no event, however, does your affiant seek personal diaries, letters or other private writings made solely for

personal use or communications to a person occupying a privileged relationship, other than those prepared in furtherance of crime, if any exist.

The facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

That affiant is employed by the Minnesota Department of Public Welfare (hereinafter D.P.W.) as Audit Director of the Audits Division.

The principal officers of Willmar Nursing Home have annually since 1972 compiled and provided to D.P.W. accounting data which allegedly reflects actual costs incurred in the administration of care to patients receiving public assistance. Up to January 1, 1974, D.P.W. authorized the Kandiyohi County Welfare Department to reimburse Willmar Nursing Home, from public funds, on a per patient, per day basis, a certain rate which is determined from the accounting data compiled and provided by management of the facility. Since January 1, 1974, such reimbursement has been made directly by D.P.W.

Pursuant to authority conferred in Minn. Stat. §256B and D.P.W. Rules 47 and 49, on December 10, 1974, D.P.W. commenced an audit of the cost data provided by Willmar Nursing Home for the fiscal years ending July 31, 1972 and July 31, 1973. Preliminary results of that audit as carried out by your affiant and by D.P.W. auditor Raymond G. Otto revealed that substantial expenses, reported to D.P.W. as expenses related to the care of welfare patients, appeared to be of doubtful validity, whereupon more thorough investigation was undertaken.

During the course of the investigation, Raymond G. Otto examined numerous business records of the Willmar Nursing Home and records of vendors providing goods to

that facility. Additionally, Raymond G. Otto interviewed a former employee of that facility and his wife, who formerly was an employee in the home of Norma and Royce Ruud. Norma Ruud is secretary-treasurer of Willmar Nursing Home; Royce Ruud is president.

The former employees are private citizens who Raymond G. Otto believes to be reliable, but who wish to remain anonymous at the present time.

On the basis of the foregoing examinations and interviews, your affiant states that the costs reported by Norman [sic] and Royce Ruud to D.P.W. for the period from August 1, 1971 to July 31, 1973 included purchases of goods used by themselves and members of their family. These purchases included: groceries from the Sky Lark Red Owl in the amount of $1,717.33; a rifle, shells, a scope and a mount from Coast-to-Coast Hardware Store in the amount of $206.55; dairy products from Oak Grove Dairy in the amount of $274.82.

Your affiant further states on the basis of the foregoing examinations and interviews that certain expenses which were paid for by Willmar Nursing Home and reported to D.P.W. by Norma and Royce Ruud for the aforesaid period are properly identifiable to other properties owned by the Ruuds, including their residence. These include: charges by Kandihohi Electric Co-op in the amount of $176.79 for services to a farm at Lake Lillian; charges by Radelins Ford Sales Agency in the amount of $563.37 for repairs to two vehicles not owned by Willmar Nursing Home; charges by Northwest Bell Telephone in the amount of $196.31 for service to a farm called Town Farm; charges by Standard Lumber Co. in the amount of

$619.26 for materials which invoices show were used for repairs at the Ruud residence and one of the farms.

Your affiant further states on the basis of the foregoing interviews and examinations that certain persons were carried on the Willmar Nursing Home payroll who did not render services to the nursing home commensurate with their salaries, if they rendered any services at all. These payroll expenses were also reported to D.P.W. for welfare reimbursement. One of the former employees referred to above was a domestic housekeeper in the Ruud home; she did not work at the nursing home. Her salary was paid by Willmar Nursing Home. Likewise, each of the four Ruud children, who are in their late teens and early twenties, were carried on the nursing home payroll at a salary of approximately $5,000 per year for the fiscal year ending July 31, 1973. The former employee stated that the children performed few, if any, services for the nursing home.

All of the expenditures and purchases outlined above were paid for by Willmar Nursing Home and were included in the D.P.W. Rule 49 rate determination. None of them were used for or related to patient care. Therefore it appears that Willmar Nursing Home has presented a claim for payment to D.P.W. which is false, and has sought and received reimbursement from D.P.W. and the Kandiyohi County Welfare Department for expenses for patient care which were not actually so incurred. Your affiant has reason to believe that Willmar Nursing Home has continued to make such improper expenditures and to present claims for reimbursement based on them to D.P.W. to the present date.

Affiant believes these records are at the above location because he has been personally informed by D.P.W. auditor Raymond G. Otto that Otto saw such business records during the course of his audit at the Willmar Nursing Home, or learned of their whereabouts from conversations with Norma Ruud and other employees of the nursing home.

WHEREFORE, affiant requests a search warrant be issued commanding RICHARD JAMES, a peace officer of the State of Minnesota, and assisting persons, ROBERT RAU, RAYMOND OTTO, BARBARA GILL, THOMAS FABEL and JOHN KAPPERS in the daytime or the nighttime, to search the hereinbefore described premises for the designated property and things, to seize said property and things, and to deliver said property and things to the custody of Richard James until the same shall be dealt with according to law.

/s/ ROBERT RAU

Subscribed and sworn to before me this 28th day of August, 1975.

/s/ ALLAN D. BUCHANAN
Judicial Officer of County Court

SEARCH WARRANT

TO: RICHARD JAMES, A PEACE OFFICER OF THE STATE OF MINNESOTA

WHEREAS, ROBERT RAU, Audit Director of the Audits Division, Department of Public Welfare, has this day on oath made application to the said Court applying

for issuance of a search warrant to search the following described premises:

The offices and record storage places of Willmar Nursing Home, * * located at 500 Russell Street, Willmar, Minnesota, * * and all other businesses owned and controlled by Norma and Royce Ruud,

for the following described property and things:

1. All records and documents evidencing purchases of goods and services made by any past or present agent, employee or owner of Willmar Nursing Home, Inc., 500 Russell Street, Willmar, Minnesota, since August 1, 1971 to the present.

2. All records and documents evidencing the identity of the person(s) responsible for making purchases of goods and services for Willmar Nursing Home since August 1, 1971 to the present.

3. All records and documents indicating the identity of any person(s) who made a purchase of goods or services in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

4. All records and documents indicating the identity of the person(s) who received goods or services purchased in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

5. All records and documents of cash or credit receipts and disbursements received or made by Willmar Nursing Home, its agents, employees or owners, since August 1, 1971 to the present, including but not limited to canceled checks.

6. All bookkeeping and accounting records of Willmar Nursing Home which relate to the information required or provided upon each D.P.W. Rule 49 report or attachments, submitted to the Minnesota Department of Public Welfare or Kandiyohi County Welfare Department by Willmar Nursing Home since August 1, 1971 to the present.

7. All records of inventory and cost analysis prepared or generated in relation to the determination of expenses incident to patient care at Willmar Nursing Home since August 1, 1971 to the present.

8. All records, correspondence and other documents indicating who had knowledge of person(s) purchasing and/or receiving goods and services obtained in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

9. All records, correspondence, memoranda and other writings or things indicating who wrongfully received goods, services or funds from Willmar Nursing Home since August 1, 1971 to the present.

10. All records, agreements or other writings which identify the person(s) who have conspired together to obtain funds from a public body through fraud, deception, misrepresentation or theft since August, 1971 to the present.

11. All records, agreements or other writings which identify the person(s) who have a direct interest in the assets and liabilities of Willmar Nursing Home.

12. All audits, bookkeeping reports, and ledgers showing any debits or credits of Willmar Nursing Home.

13. All bookkeeping, accounting, tax, payroll and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons, other than the Willmar Nursing Home.

WHEREAS, the application and supporting affidavit of Robert Rau were duly presented and read by the Court, and being fully advised in the premises,

NOW THEREFORE, the Court finds that probable cause exists for the issuance of a search warrant upon the grounds that the property and things above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.

The Court further finds that probable cause exists to believe that the above-described property and things are at the above-described premises.

NOW THEREFORE, YOU RICHARD JAMES, THE PEACE OFFICER AFORESAID, AND ASSISTING PERSONS ROBERT RAU, RAYMOND OTTO, BARBARA GILL, THOMAS FABEL AND JOHN KAPPERS ARE HEREBY COMMANDED IN THE DAYTIME TO SEARCH THE DESCRIBED PREMISES FOR THE ABOVE-DESCRIBED PROPERTY AND THINGS, AND TO SEIZE SAID PROPERTY AND THINGS AND TO DELIVER CUSTODY OF SAID PROPERTY AND THINGS TO RICHARD JAMES, A PEACE OFFICER FOR THE CITY OF WILLMAR POLICE DEPARTMENT, WILLMAR, MINNESOTA.

Dated: August 28, 1975.

BY THE COURT

/s/ ALLAN D. BUCHANAN
Judicial Officer, County Court

APPLICATION FOR SEARCH WARRANT AND SUPPORTING AFFIDAVIT

ROBERT RAU, being first duly sworn upon oath, hereby makes application to this Court for a warrant to search the premises hereinafter described, for the property and things hereinafter described.

Affiant knows the contents of this application and supporting affidavit, and the statements herein are true of his own knowledge, save as to such as are herein stated on information and belief, and as to those, he believes them to be true.

Affiant has good reason to believe, and does believe, that the following described property and things, to-wit:

1. All records and document evidencing purchases of goods and services made by any past or present agent, employee or owner of Willmar Nursing Home, Inc., 500 Russell Street, Willmar, Minnesota, from August 1, 1971 to the present.

2. All records and documents evidencing the identity of the person(s) responsible for making purchases of goods and services for Willmar Nursing Home since August 1, 1971 to the present.

3. All records and documents indicating the identity of any person(s) who made a purchase of

goods or services in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

4. All records and documents indicating the identity of the person(s) who received goods or services purchased in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

5. All records and documents of cash or credit receipts and disbursements received or made by Willmar Nursing Home, its agents, employees or owners, since August 1, 1971 to the present.

6. All bookkeeping and accounting records of Willmar Nursing Home which relate to the information required or provided upon each D.P.W. Rule 49 report or attachments, submitted to the Minnesota Department of Public Welfare or Kandiyohi County Welfare Department by Willmar Nursing Home since August 1, 1971 to the present.

7. All records of inventory and cost analysis prepared or generated in relation to the determination of expenses incident to patient care at Willmar Nursing Home since August 1, 1971 to the present.

8. All records, correspondence and other documents indicating who had knowledge of person(s) purchasing and/or receiving goods and services obtained in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

9. All records, correspondence, memoranda and

other writings or things indicating who wrongfully received goods, services or funds from Willmar Nursing Home since August 1, 1971 to the present.

10. All records, agreements or other writings which identify the person(s) who have conspired together to obtain funds from a public body through fraud, deception, misrepresentation or theft since August, 1971 to the present.

11. All records, agreements or other writings which identify the person(s) who have a direct interest in the assets and liabilities of Willmar Nursing Home.

12. All audits, bookkeeping reports, and ledgers showing any debits or credits of Willmar Nursing Home.

13. All bookkeeping, accounting, tax, payroll and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons, other than the Willmar Nursing Home.

are at the premises described as follows:

the offices and record storage places of Willmar Nursing Home, Inc., ** located at 1004 Ella Avenue, Willmar, Minnesota * * and all other businesses owned and controlled by Norma and Royce Ruud,

upon the grounds the property above-described constitutes evidence which tends to show a crime has been committed,

or tends to show that a particular person has committed a crime, to-wit: violations of Minn. Stat. §609.465 and Minn. Stat. §609.52 (1973 Supp.).

In no event, however, does your affiant seek personal diaries, letters or other private writings made solely for personal use or communications to a person occupying a privileged relationship, other than those prepared in furtherance of crime, if any exist.

The facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

That affiant is employed by the Minnesota Department of Public Welfare (hereinafter D.P.W.) as Audit Director of the Audits Division.

The principal officers of Willmar Nursing Home have annually since 1972 compiled and provided to D.P.W. accounting data which allegedly reflects actual costs incurred in the administration of care to patients receiving public assistance. Up to January 1, 1974, D.P.W. authorized the Kandiyohi County Welfare Department to reimburse Willmar Nursing Home, from public funds, on a per patient, per day basis, a certain rate which is determined from the accounting data compiled and provided by management of the facility. Since January 1, 1974, such reimbursement has been made directly by D.P.W.

Pursuant to authority conferred in Minn. Stat. §256B and D.P.W. Rules 47 and 49, on December 10, 1974, D.P.W. commenced an audit of the cost data provided by Willmar Nursing Home for the fiscal years ending July 31, 1972 and July 31, 1973. Preliminary results of that audit as carried out by your affiant and by D.P.W. auditor Raymond G. Otto revealed that substantial expenses, reported to D.P.W. as expenses related to the care of wel-

fare patients, appeared to be of doubtful validity, whereupon more thorough investigation was undertaken.

During the course of the investigation, Raymond G. Otto examined numerous business records of the Willmar Nursing Home and records of vendors providing goods to that facility. Additionally, Raymond G. Otto interviewed a former employee of that facility and his wife, who formerly was an employee in the home of Norma and Royce Ruud. Norma Ruud is secretary-treasurer of Willmar Nursing Home; Royce Ruud is president.

The former employees are private citizens who Raymond G. Otto believes to be reliable, but who wish to remain anonymous at the present time.

On the basis of the foregoing examinations and interviews, your affiant states that the costs reported by Norman [sic] and Royce Ruud to D.P.W. for the period from August 1, 1971 to July 31, 1973 included purchases of goods used by themselves and members of their family. These purchases included: groceries from the Sky Lark Red Owl in the amount of $1,717.33; a rifle, shells, a scope and a mount from Coast-to-Coast Hardware Store in the amount of $206.55; dairy products from Oak Grove Dairy in the amount of $274.82.

Your affiant further states on the basis of the foregoing examinations and interviews that certain expenses which were paid for by Willmar Nursing Home and reported to D.P.W. by Norma and Royce Ruud for the aforesaid period are properly identifiable to other properties owned by the Ruuds, including their residence. These include: charges by Kandiyohi Electric Co-op in the amount of $176.79 for services to a farm at Lake Lillian; charges by Radelins Ford Sales Agency in the amount of $563.37

for repairs to two vehicles not owned by Willmar Nursing Home; charges by Northwest Bell Telephone in the amount of $196.31 for service to a farm called Town Farm; charges by Standard Lumber Co. in the amount of $619.26 for materials which invoices show were used for repairs at the Ruud residence and one of the farms.

Your affiant further states on the basis of the foregoing interviews and examinations that certain persons were carried on the Willmar Nursing Home payroll who did not render services to the nursing home commensurate with their salaries, if they rendered any services at all. These payroll expenses were also reported to D.P.W. for welfare reimbursement. One of the former employees referred to above was a domestic housekeeper in the Ruud home; she did not work at the nursing home. Her salary was paid by Willmar Nursing Home. Likewise, each of the four Ruud children, who are in their late teens and early twenties, were carried on the nursing home payroll at a salary of approximately $5,000 per year for the fiscal year ending July 31, 1973. The former employee stated that the children performed few, if any, services for the nursing home.

All of the expenditures and purchases outlined above were paid for by Willmar Nursing Home and were included in the D.P.W. Rule 49 rate determination. None of them were used for or related to patient care. Therefore it appears that Willmar Nursing Home has presented a claim for payment to D.P.W. which is false, and has sought and received reimbursement from D.P.W. and the Kandiyohi County Welfare Department for expenses for patient care which were not actually so incurred. Your affiant has reason to believe that Willmar Nursing Home has continued to make such improper expenditures and to present

claims for reimbursement based on them to D.P.W. to the present date.

Affiant believes these records are at the above location because he has been personally informed by D.P.W. auditor Raymond G. Otto that Otto saw such business records during the course of his audit at the Willmar Nursing Home, or learned of their whereabouts from conversations with Norma Ruud and other employees of the nursing home.

WHEREFORE, affiant requests a search warrant be issued commanding RICHARD JAMES, a peace officer of the State of Minnesota, [and assisting persons] ROBERT RAU, RAYMOND OTTO, BARBARA GILL, THOMAS FABEL AND JOHN KAPPERS, in the daytime or the nighttime, to search the hereinbefore described premises for the designated property and things, to seize said property and things, and to deliver said property and things to the custody of Richard James until the same shall be dealt with according to law.

/s/ ROBERT RAU

Subscribed and sworn to before me this 28th day of August, 1975.

/s/ ALLAN D. BUCHANAN
Judicial Officer of County Court

SEARCH WARRANT

WHEREAS, ROBERT RAU, Audit Director of the Audits Division, Department of Public Welfare, has this day on oath, made application to the said Court applying for

issuance of a search warrant to search the following described premises:

> The offices and record storage place of Willmar Nursing Home, * * located at 1004 Ella Avenue, Willmar, Minnesota * * and all other businesses owned and controlled by Norma and Royce Ruud.

for the following described property and things:

1. All records and documents evidencing purchases of goods and services made by any past or present agent, employee or owner of Willmar Nursing Home, Inc., 1004 Ella Avenue, Willmar, Minnesota, since August 1, 1971 to the present.

2. All records and documents evidencing the identity of the person(s) responsible for making purchases of goods and services for Willmar Nursing Home since August 1, 1971 to the present.

3. All records and documents indicating the identity of any person(s) who made a purchase of goods or services in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

4. All records and documents indicating the identity of the person(s) who received goods or services purchased in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

5. All records and documents of cash or credit receipts and disbursements received or made by Willmar Nursing Home, its agents, employees or owners,

since August 1, 1971 to the present, including but not limited to canceled checks.

6. All bookkeeping and accounting records of Willmar Nursing Home which relate to the information required or provided upon each D.P.W. Rule 49 report or attachments, submitted to the Minnesota Department of Public Welfare or Kandiyohi County Welfare Department by Willmar Nursing Home since August 1, 1971 to the present.

7. All records of inventory and cost analysis prepared or generated in relation to the determination of expenses incident to patient care at Willmar Nursing Home since August 1, 1971 to the present.

8. All records, correspondence and other documents indicating who had knowledge of person(s) purchasing and/or receiving goods and services obtained in the name or on the account of Willmar Nursing Home since August 1, 1971 to the present.

9. All records, correspondence, memoranda and other writings or things indicating who wrongfully received goods, services or funds from Willmar Nursing Home since August 1, 1971 to the present.

10. All records, agreements or other writings which identify the person(s) who have conspired together to obtain funds from a public body through fraud, deception, misrepresentation or theft since August, 1971 to the present.

11. All records, agreements or other writings which identify the person(s) who have a direct inter-

est in the assets and liabilities of Willmar Nursing Home.

12. All audits, bookkeeping reports, and ledgers showing any debits or credits of Willmar Nursing Home.

13. All bookkeeping, accounting, tax, payroll and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons, other than the Willmar Nursing Home.

WHEREAS, the application and supporting affidavit of Robert Rau were duly presented and read by the Court, and being fully advised in the premises,

NOW THEREFORE, the Court finds that probable cause exists for the issuance of a search warrant upon the grounds that the property and things above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.

The Court further finds that probable cause exists to believe that the above-described property and things are at the above-described premises.

NOW THEREFORE YOU RICHARD JAMES, THE PEACE OFFICER AFORESAID, [AND ASSISTING PERSONS] ROBERT RAU, RAYMOND OTTO, BARBARA GILL, THOMAS FABEL AND JOHN KAPPERS, ARE HEREBY COMMANDED IN THE DAY-

TIME TO SEARCH THE DESCRIBED PREMISES FOR THE ABOVE-DESCRIBED PROPERTY AND THINGS, AND TO SEIZE SAID PROPERTY AND THINGS AND TO DELIVER CUSTODY OF SAID PROPERTY AND THINGS TO RICHARD JAMES, A PEACE OFFICER FOR THE CITY OF WILLMAR POLICE DEPARTMENT, WILLMAR, MINNESOTA.

Dated: August 28, 1975.

BY THE COURT

/s/ ALLAN D. BUCHANAN
Judicial Officer, County Court

RECEIPT, INVENTORY AND RETURN

I, Richard James, received the attached search warrant issued by the Honorable Alan D. Buchanan, on August 28, 1975, and have executed it as follows:

Pursuant to said warrant, on August 28, 1975, at 6:30 o'clock p.m., I searched the (premises) (motor vehicle) (person) described in said warrant, and left a true and correct copy of said warrant at 500 Russell, Willmar, Minnesota. Office Basement.

I took into custody property named in said warrant and listed below:

Box #10

1. 1974-75 Bank Statements and Cancelled Checks.
2. 1974-75 Payroll Journal
3. 1974-75 Cash Receipts Journal.

4. 1973-74 Census.
5. 1974-75 BL State and cancelled ck.
6. Pay Chg. Journal 8/73—10/74.
7. Correspondence—M & Pentilla & State Tax Dept.
8. File—things sent to O. Pentilla 31 & 7/74.
9. File—Farming.
10. Misc. papers from letter file holder in table.
11. N.H. Minute Book.
12. 7—Files from middle left drawer—gray desk.
13. 9—files from on top of desk.
14. N & R Ruud file including check book and employee wage record.
15. Income tax file.
16. Ford Motor Corp—(illegible).
17. File from Boston right side drawer of gray desk.
18. 74/75 check stubs and charge of (illegible)
19. 2 employee files from top of File #2.
20. 3 files—wages, U.S. Dept. of Labor, and Broeker —wage & hour law.

Box #13

74/75—Gen. Ledger & Gen. Journals—EPP

FYE—7/31/73 and 7/31/74 worksheets of O. Pentilla

Eqpt. Bldg. & Land ledger cards

Bachman—Anderson Ins. file.

(I left a receipt for the property and things listed with the warrant as set forth above.)

(None of the items set forth in the search warrant were found.)

I shall (retain) or (deliver) custody of said property as directed by Court order.

Richard James, being first duly sworn, upon oath, deposes and says that he has read the foregoing receipt, inventory and return and the matters stated are true and correct, except as to such matters therein on information and belief, and as to those, he believes them to be true.

/s/ RICHARD JAMES

RECEIPT, INVENTORY AND RETURN

I, Richard James, received the attached search warrant issued by the Honorable Alan D. Buchanan, on Aug. 28, 1975, and have executed it as follows:

Pursuant to said warrant, on Aug. 28, 1975, at 6:30 o'clock p.m., I searched the premises described in said warrant, and left a true and correct copy of said warrant at 500 Russell St., Willmar, Minn.

I took into custody property named in said warrant and listed below:

1. Payroll records 1971
2. Time cards 7/31/72—2/15/73
3. Time cards 2/28/73—10/15/73
4. Time cards 10/21/73—5/4/74

5.-16. Folders with check stubs for 8/73-7/74

17. Payroll records 1972

18.-134. Accounts payable 8/73-7/74

135. Monthly Bank statements w/cancelled checks 8/71/74

136.-218. Accounts payable/invoices 8/72-7/73

219. Payroll Journal 7/31/73-7/13/74

220. Payroll Journal 7/31/71-7/31/72

221. Payroll Journal 8/15/72-7/15/73

223.-383. Accounts payable invoices 8/71-7/72

384.-419. Journals 8/71-7/74

420-455. Ledgers 8/71-7/74

456.—Ramsey Hospital Admission form—Betty Ruud

457.—DPW Audit file

458.—Financial Statement by Moen & Pentilla for 7/72

459.—Financial Statement by Moen & Pentilla for 7/73

460.—Meal Center instructions

461.—Letter from Oiva Pentilla to Mrs. Ruud dated 4/25/75

462.—Letter from N. Ruud to O. Pentilla dated 4/-15/75

463. Client's copy Rule 49 General Info. form

464. Operating Statements—4 mos. ending 11/30/73 per paid by Moen & Pentilla

All above items taken from store room "m" except #456—#464 from administrator's office.

(I left a receipt for the property and things listed with the warrant as set forth above.)

(None of the items set forth in the search warrant were found.)

I shall (retain) or (deliver) custody of said property as directed by Court order.

Richard James, being first duly sworn, upon oath, de-

poses and says that he has read the foregoing receipt, inventory and return and the matters stated are true and correct, except as to such matters stated therein on information and belief, and as to those, he believes them to be true.

/s/ RICHARD JAMES

RECEIPT, INVENTORY AND RETURN

I, Richard James, received the attached search warrant issued by the Honorable Alan D. Buchanan, on August 28, 1975, and have executed it as follows:

Pursuant to said warrant, on August 28, 1975, at 6:30 o'clock p.m., searched the premises described in said warrant and left a true and correct copy of said warrant with Royce Ruud, 1004 Ella Ave., Willmar, Minn.

I took into custody property named in said warrant and listed below:

1. 7-31-73 DPW Rule 49 Cost Report
2. 7-31-72 DPW Rule 49 Cost Report
3. Form 1120—1972 U.S. Corp. Inc. Tax Return
4. File—Bonnie Lee Saddle Shop
5. File—Travel Receipts, etc.
6. File—Willmar Nursing Home, Inc.—1973
7. File—Farm Soc. Sec. on Farm Labor
8. File—Income Tax—W-2's—1972
9. File—Financial Statement—1973
10. File—Farm Income—1973

11. File—Farm Expense—1973
12. File—Farm Expense—1974
13. File—Annual Reports—Willmar Nursing Home
14. File—Financial Statements—Willmar Nursing Home
15. File—Farm Expense—1972
16. File—Farm Income—1972
17. File—Willmar Saddle Club—1973
18. File —The Stradler Hilton—Willmar Nursing Home
19. File—Silva Mind Control
20. File—Dayton's—Donaldson's—1973
21. File—Randy—Misc. Papers
22. File—Penney's—1973
23. File—Miscellaneous—1973
24. File—Betty—Letters
25. File—Dayton's—Donaldson's—1973
26. File—Diamond Lake—Property & Assn.
27. File—Goats
28. File—Linda—Miscellaneous
29. File—Penney's—1972
30. File—Silva Mind Control
31. File—Penney's—1972

32. File—Miracle Maid Cookware
33. File—Minnesota Nursing Home Association
34. File—Willmar Nursing Home—Sale & Acct.
35. File—Concord House
36. File—Oiva Penttila
37. File—Financing Information
38. File—Penney's—1974
39. File—Miscellaneous—Farm
40. File—Lane Bryant
41. File—Dayton's—Donaldson's
42. Document—1974 Annual Meeting
43. File—Randy Ruud
44. File—Notes Payable—1972
45. File—Miscellaneous Documents
46. File—Licensing Cards
47. Document—Certificate of Special Assessments
48. Document—Mn. Retail Installment Contract—Auto
49. Document—Licensing Remittance Receipt
50. Document—Application for Employment
51. Document—Great Central Insurance Company
52. Document—Corneil-Elkjer—R/E & Insurance
53. Document—#9542—Estimate for Work

54. Document—W-2—Becky Ruud

55. Document—W-2—Royce Ruud

56. Document—R/E Tax Statement—Treas. Office—Kandiyohi Co.

57. Document—R/E Tax Statement—Treas. Office—Kandiyohi Co.

58. Document—Retail Installment Contract

59. Document—Rodelius Ford Sales, Inc.

60. Document—Security Agreememt

61. Document—Rodelius Ford Sales, Inc.

(I left a receipt for the property and things listed with the warrant as set forth above.)

(None of the items set forth in the search warrant were found.)

I shall (retain) or (deliver) cutsody of said property as directed by Court order.

Richard James, being first duly sworn, upon oath, deposes and says that he has read the foregoing receipt inventory and return and the matters stated are true and correct, except as to such matters stated therein on information and belief, and as to those, he believes them to be true.

/s/ RICHARD JAMES

STATE OF MINNESOTA — IN DISTRICT COURT
Kandiyohi County — Eighth Judicial District

NORMA RUUD, ROYCE RUUD, and WILLMAR NURSING HOME, INC., a Minnesota Corporation,

Plaintiffs,

vs.

VERA LIKINS, Commissioner of Public Welfare, ROBERT RAU, RAYMOND OTTO, THOMAS FABEL, BARBARA GILL, RICHARD JAMES, JOHN KAPPERS, WARREN SPANNAUS, Attorney General of the State of Minnesota, and RONALD H. SCHNEIDER, Kandiyohi County Attorney,

Defendants.

ORDER TERMINATING TEMPORARY RESTRAINING ORDER, DENYING MOTION FOR TEMPORARY INJUNCTION, AND GRANTING IN PART AND DENYING IN PART MOTION FOR RETURN OF PROPERTY AND SUPPRESSION OF USE AS EVIDENCE

Nos. 20803, 20805

Plaintiffs, in No. 20803, brought a Motion for Return of Property and Suppression of Use as Evidence arising from searches conducted pursuant to warrants on August 28 to 29, 1975 of the premises of the Willmar Nursing Home, Inc., at 500 Russell Avenue, Willmar, Minnesota, and the home of Royce Ruud and Norma Ruud, at 1004 Ella Avenue West, Willmar, Minnesota. Upon learning

that evidence from the search would probably be shortly presented to a Grand Jury in Kandiyohi County, they brought, on September 19, 1975, in No. 20805, a Motion for Temporary Restraining Order and a Motion for Temporary Injunction to prevent Defendants, or anyone acting in their behalf, from presenting to the Grand Jury of Kandiyohi County any evidence arising from the same search until the issues as to the legality of the searches and seizures of the evidence from those premises has been finally determined. That same day this Court granted a Temporary Restraining Order restraining Defendants or anyone acting in their behalf from presenting to the Grand Jury of Kandiyohi County, with respect to Plaintiffs, any evidence resulting from or the product of the search of the premises of Willmar Nursing Home or of the home of Royce and Norma Ruud on August 28 and 29, 1975, until such time as the Motion for Temporary Injunction has been heard and determined.

These matters were consolidated and came on for hearing before the Court at Willmar on September 23, 1975. John M. Broeker and Steven R. Hedges of Broeker and Bachman, and George E. Hulstrand of Hulstrand, Anderson & Larson appeared for Plaintiffs. Ronald H. Schneider, Kandiyohi County Attorney, Thomas Fabel, Assistant Attorney General, and Barbara Gill, Assistant Attorney General appeared for Defendants.

Upon the evidence adduced, the arguments of counsel, and all the files, records and proceedings herein

IT IS HEREBY ORDERED that the Temporary Restraining Order of September 19, 1975 be terminated.

IT IS FURTHER ORDERED that the Motion for Temporary Injunction be denied.

IT IS FURTHER ORDERED that all evidence seized from Willmar Nursing Home, Inc., and from the home of Royce and Norma Ruud on August 28 and 29, 1975 pursuant to specification No. 13 of each search warrant, consisting of "[a]ll bookkeeping, accounting, tax, payroll and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons, other than the Willmar Nursing Home" be returned forthwith and that the use, as evidence at any hearing or trial, of anything obtained in and as a result of the searches and seizures under specification No. 13 of each warrant be forever suppressed.

IT IS FURTHER ORDERED that the Motion for Return of Property and Suppression of Use as Evidence is in all other respects denied.

Dated: September 24, 1975.

Let the following Memorandum be made a part of this Order.

/s/ THOMAS J. STAHLER
Judge

MEMORANDUM

The Court has reviewed the authorities cited by counsel for Plaintiffs and Defendants. Time does not allow discussion of all the authorities. In *United States v. Calandra*, 414 U.S. 338, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1973), a grand jury witness invoked the exclusionary rule of the Fourth Amendment—under which evidence obtained in

violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of an illegal search and seizure—in refusing to testify, claiming that the Grand Jury's questioning was based on illegally obtained evidence. The U.S. Supreme Court held that the exclusionary rule would not be applied to grand jury proceedings there, reasoning that allowing a grand jury witness to invoke the exclusionary rule would unduly interfere with the effective and expeditous discharge of the Grand Jury's duties, would achieve only a speculative or minimal advance of the rule's purpose of detering [sic] police misconduct, and police incentive to disregard Fourth Amendment requirements to obtain a grand jury indictment would be substantially negated by the inadmissibility of the illegally seized evidence in a subsequent criminal prosecution of the search victim.

The holding and rationale of *Calandra* apply with equal force in the instant case, unless authority is granted under Minnesota law for a Court to suppress from presentation to a grand jury in this state illegally seized evidence. M.S. 626.21, under which illegally seized evidence may be ordered returned and suppressed from evidence "at any hearing or trial" does not include the authority to suppress presentation of such evidence to a grand jury. This is to be contrasted with M.S. 626A.04, which specifically provides for suppression of certain intercepted wire or oral communications "in any trial, hearing or other proceeding in or before any court or grand jury . . . ."

Except to the extent modified by Minnesota Rules of Criminal Procedure, Rule 18.06, an indictment is to be based on substantial evidence that would be admissible at trial. However, reception of inadmissible evidence, under

Rule 18.06, Subd. 2, is not grounds for dismissal of an indictment if there is sufficient admissible evidence to support the indictment. This is in accord with the caselaw under M.S. 628.59, superseded by Rule 18.06, upholding indictments where non-legal evidence was presented if other evidence would support the indictment. See *State v. Kotlarek*, 279 Minn. 140, 155 N.W. 2d 891, 39 A.L.R. 3d 1059 (1968); *State v. Thompson*, 273 Minn. 1, 139 N.W. 2d 490, cert. denied 385 U.S. 817, 87 S. Ct. 39, 17 L.Ed. 2d 56 (1966). Considering the serious interference with the effective and expeditous discharge of its duties, it is even more compelling that a court not seek to rule on whether particular items of evidence shall be presented to a grand jury.

On their face, specifications No. 13 of each search warrant pertain only to records other than those of the nursing home and have no relevance to any investigation for fraud in the operation of the nursing home. In accordance with M.S. 626.21, all evidence seized under specification No. 13 of each warrant, or derived therefrom, must be suppressed from evidence in any trial or hearing and returned.

Plaintiffs have raised substantial questions regarding the legality of the search and seizure of the remaining evidence. By its ruling herein the court does not express any opinion on the validity of the seizure of the remaining evidence. Such a determination is best left for consideration at an Omnibus hearing in the event criminal proceedings are actually initiated. If criminal proceedings are not initiated, Plaintiffs may of course again seek to have the evidence suppressed from future use and returned to them.

Dated: September 24, 1975.

/s/ THOMAS J. STAHLER
Judge

STATE OF MINNESOTA — IN DISTRICT COURT
County of Kandiyohi — Eighth Judicial District

STATE OF MINNESOTA,

Plaintiff,

vs.

NORMA RUUD, ROYCE RUUD, and WILLMAR NURSING HOME, INC., a Minnesota Corporation,

Defendants.

INDICTMENT

Pursuant to Rule 17.01 Subd. 2

The above-named Defendants are hereby accused and charged by the Grand Jury of the above-named County, in the State of Minnesota, by this Indictment of the offense of:

COUNT I.

Charge: Presenting false demand for audit to a public body in violation of Minnesota Statute §609.465 and 609.05 (1974).

The essential facts constituting the offense charged are as follows:

Norma Ruud, and Royce Ruud, wife and husband respectively, are the majority stockholders in and corporate officers of Willmar Nursing Home, Inc., a Minnesota Corporation, which does business as the Willmar Nursing Home, 500 Russell Street, Willmar, Minnesota. Norma Ruud is the administrator and Royce Ruud is the assistant administrator of said Willmar Nursing Home. Since at least November 1, 1972, said Willmar Nursing Home has derived a substantial portion of its income from welfare reimbursement for services provided to welfare-eligible patients. The per diem rate of reimbursement which said Willmar Nursing Home has received during said period for services provided to welfare patients has been based upon a detailed cost report which said Willmar Nursing Home, like all other nursing homes participating in the welfare medical program, has submitted annually to the Minnesota Department of Public Welfare. Said report is a detailed statement of costs incurred by the nursing home for the care of patients during its preceding fiscal year; generally, the higher the costs which are reported, the higher the rate of reimbursement which is subsequently established. Pursuant to the lawfully promulgated rules of the Department of Public Welfare, all such cost reports have been signed and certified by Norma Ruud or Royce Ruud as true statements of patient-related costs actually incurred by said Willmar Nursing Home during its preceding fiscal year.

Said Norma Ruud, Royce Ruud, and Willmar Nursing Home Inc., on or about December 30, 1974, at the City of Willmar, County of Kandiyohi, each intentionally aiding, advising, counseling and conspiring with the others, and all doing business as Willmar Nursing Home, did will-

fully, unlawfully, intentionally, knowingly and feloniously present a demand for audit to the Department of Public Welfare, such Department being a public body authorized by law to determine a per diem patient rate for welfare reimbursement on said audit, which demand was false, was known by the aforesaid Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., to be false, was made with intent to defraud the aforesaid Department of Public Welfare, and which demand did in fact defraud the said Department of Public Welfare in an amount exceeding $2,500.00. To wit, said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did, on or about December 30, 1974, submit a cost report to the Department of Public Welfare in application for a welfare rate, which cost report included as costs related to patient care, costs which were not in fact related to patient care, such as the cost of monetary gifts to the children of the said Norma Ruud and Royce Ruud, the cost of goods and services received by the said Norma Ruud and Royce Ruud, and the cost of goods and services received by the children of the said Norma Ruud and Royce Ruud. In falsely representing the aforesaid costs as costs related to patient care, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did intend to and did, in fact, cause the Department of Public Welfare to establish a welfare rate for Willmar Nursing Home which was higher than the rate to which Willmar Nursing Home was lawfully entitled. After filing the aforesaid falsified cost report and receiving the aforesaid welfare rate, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did seek and did obtain reimbursement from the Department of Public Welfare for services provided to welfare-eligible patients between August 1, 1974, and January 31, 1975, and between February 1, 1975 and July 31, 1975. As a direct result of the aforesaid fraudulent representations made in the aforesaid cost report, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., received excessive and unlawful reimbursement for each of said six month periods in an amount exceeding $2,500.00.

COUNT II.

Charge: Theft in violation of Minnesota Statute §609.52 Subd. 2(3) and 609.05 (1974).

The essential facts constituting the offense charged are as follows:

Norma Ruud, and Royce Ruud, wife and husband respectively, are the majority stockholders in and corporate officers of Willmar Nursing Home, Inc., a Minnesota Corporation, which does business as the Willmar Nursing Home, 500 Russell Street, Willmar, Minnesota. Norma Ruud is the administrator and Royce Ruud is the assistant administrator of said Willmar Nursing Home. Since at least November 1, 1972, said Willmar Nursing Home has derived a substantial portion of its income from welfare reimbursement for services provided to welfare-eligible patients. The per diem rate of reimbursement which said Willmar Nursing Home has received during this period for services provided to welfare patients has been based upon a detailed cost report which said Willmar Nursing Home, like all other nursing homes participating in the welfare medical program, has submitted annually to the Minnesota Department of Public Welfare. Said report is a detailed statement of costs incurred by the nursing home for the care of patients during its preceding fiscal year;

generally, the higher the costs which are reported, the higher the rate of reimbursement which is subsequently established. Pursuant to the lawfully promulgated rules of the Department of Public Welfare, all such cost reports have been signed and certified by Norma Ruud or Royce Ruud as true statements of patient-related costs actually incurred by said Willmar Nursing Home during its preceding fiscal year.

Said Norma Ruud, Royce Ruud and Willmar Nursing Home, Inc., on or about September 1, 1974 to February 28, 1975, at the City of Willmar, County of Kandiyohi, each intentionally aiding, advising, counseling and conspiring with each other, and all doing business as the Willmar Nursing Home, did willfully, unlawfully, intentionally, knowingly, and feloniously obtain for themselves the possession and custody of public funds from the State of Minnesota, Department of Public Welfare, by intentionally deceiving said Department of Public Welfare with representations they and each of them, knew to be false, made with intent to defraud, and which, in fact, did defraud said Department of Public Welfare in an amount exceeding $2,500.00. To wit: the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did submit to the Department of Public Welfare on or about the first day of each month from September 1, 1974 to February 28, 1975, a claim for reimbursement for services to welfare patients; said claims were computed on the basis of a per diem patient rate, which rate, in turn, was derived from a cost report submitted to the aforesaid Department of Public Welfare on or about the 30th day of December, 1974, by the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc. The said cost report was certified

by them as true, but it was in fact, false, in that it included as costs of patient care, costs which were not, in fact, related to patient care, such as the cost of monetary gifts to the children of the said Norma Ruud and Royce Ruud, the cost of goods and services received by the said Norma Ruud and Royce Ruud, and the cost of goods and services received by the children of the said Norma Ruud and Royce Ruud. In falsely and fraudulently representing the aforesaid costs as costs related to patient care, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did intend to and did, in fact, cause the Department of Public Welfare to establish a welfare rate for the Willmar Nursing Home which was higher than the rate to which the Willmar Nursing Home was lawfully entitled. The subsequent claims for reimbursement submitted by the said Norma Ruud, Royce Ruud and Willmar Nursing Home, Inc., to the Department of Public Welfare during the period from September 1, 1974 to February 28, 1975, were intended to and did, in fact, cause the Department of Public Welfare to make payments to the Willmar Nursing Home in amounts based upon the fraudulently established welfare rate, which payments were accepted by the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc. As a result of the claims submitted during that period, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., wrongfully obtained public money from the Department of Public Welfare in an amount exceeding $2,500.00.

COUNT III.

Charge: Theft in violation of Minnesota Statute §609.52 Subd. 2(3) and 609.05 (1974).

The essential facts constituting the offense charged are as follows:

Incorporates all parts of Paragraph I of Count I above and makes a part hereof by reference.

Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., on or about March 1, 1975 to August 31, 1975, at the City of Willmar, County of Kandiyohi, each intentionally aiding, advising, counseling and conspiring with the others, and all doing business as The Willmar Nursing Home, did willfully, unlawfully, intentionally, knowingly, and feloniously obtain for themselves the possession and custody of public funds from the State of Minnesota, Department of Public Welfare, by intentionally deceiving said Department of Public Welfare with representations they knew to be false, made with intent to defraud, and which, in fact, did defraud said Department of Public Welfare in an amount exceeding $2,500.00. To wit, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did submit to the Department of Public Welfare on or about the first day of each month from March 1, 1975 to August 31, 1975, a claim for reimbursement for services to welfare patients; said claims were computed on the basis of a per diem patient rate, which rate, in turn, was derived from a cost report submitted to the aforesaid Department of Public Welfare on or about December 30, 1974, by the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc. The said cost report was certified by them as true, but it was, in fact, false, in that it included as costs of patient care, costs which were not, in fact, related to patient care, such as the cost of monetary gifts to the children of the said Norma Ruud and Royce Ruud,

the cost of goods and services received by the said Norma Ruud and Royce Ruud, and the cost of goods and services received by the children of the said Norma Ruud and Royce Ruud. In falsely and fraudulently representing the aforesaid costs as costs related to patient care, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., did intend to and did, in fact, cause the Department of Public Welfare to establish a welfare rate for the Willmar Nursing Home which was higher than the rate to which the Willmar Nursing Home was lawfully entitled. The subsequent claims for reimbursement submitted by the said Norma Ruud, Royce Ruud and Willmar Nursing Home, Inc., to the Department of Public Welfare during the period from March 1, 1975 to August 31, 1975, were intended to and did, in fact, cause the Department of Public Welfare to make payments to the Willmar Nursing Home in amounts based upon the fraudulently established welfare rate, which payments were accepted by the said Norma Ruud, Royce Ruud and Willmar Nursing Home, Inc. As a result of the claims submitted during that period, the said Norma Ruud, Royce Ruud, and Willmar Nursing Home Inc., wrongfully obtained public money from the Department of Public Welfare in an amount exceeding $2,500.00 Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Minnesota, Dated at Willmar in the County of Kandiyohi, and State of Minnesota, this 30th day of September, 1975.

/s/ GERALD LATTEREL
Foreman of the Grand Jury

NOTICE OF MOTIONS AND MOTIONS

TO: STATE OF MINNESOTA and RONALD H. SCHNEIDER, Kandiyohi County Attorney, 706 First Street South, Willmar, Minnesota 56201

THOMAS FABEL, Deputy Attorney General, and BARBARA GILL, Special Assistant Attorney General, Minnesota Department of Public Welfare, Centennial Office Building, Fourth Floor, St. Paul, Minnesota 55155, Its Attorneys.

PLEASE TAKE NOTICE that on the 12th day of November, 1975, at 10:00 o'clock in the A.M., or as soon thereafter as counsel may be heard, the Defendants herein will move the Court at the Omnibus Hearing in the above-referenced matter, to be held at the Kandiyohi County Courthouse, before Judge C.A. Rolloff, for Orders:

1. Forever suppressing the use as evidence of any and all items and property seized by Plaintiff during a search carried out on August 28, 1975, and extending into August 29, 1975, including any evidence or information obtained as a consequence of said search and seizure, and directing the return of all such seized property.

2. Forever suppressing the Affidavit Answers to—Interrogatory submitted by Norma Ruud to the Department of Public Welfare, dated April 1, 1975.

3. Dismissing the Indictment filed herein, and all Counts thereof, on the grounds that the evidence admissible before the Grand Jury was not sufficient to establish the offenses charged or any lesser or other included offenses or any offenses of a lesser degree.

4. Dismissing the Indictment filed herein, and all Counts thereof, on the basis that the Indictment was not found or returned as required by law in that the transcript of the Grand Jury proceedings is not complete, as required by law, and in that the Indictment does not contain a complete enumeration of the witnesses appearing before the Grand Jury.

5. Dismissing the Indictment filed herein, and all Counts thereof, on the grounds that the facts stated do not constitute an offense; or, in the alternative, directing that the prosecution be required to furnish the defense with a specific enumeration of costs reported by Defendants, which costs are alleged by prosecution not to have been actually incurred by Defendants or to have been fraudulently reported by Defendants, itemizing and stating with particularity such costs.

6. Dismissing the Indictment filed herein, and all Counts thereof, on the grounds of such violations of the Minnesota Rules of Criminal Procedures, Minnesota Statutes, and constitutional safeguards as may be disclosed or discovered at the time of the Omnibus Hearing.

7. Granting to Defendants a reasonable extension of time to respond to any demands for discovery which have been or might be served by the prosecution upon the defense until such time as the defense has received the responses to its Demand by Defendants for Discovery Pursuant to Rule 9.01, dated October 23, 1975, has received the specific enumerations requested in Paragraph 5 above, and has had a reasonable period of time to review such material and prepare any necessary responses to such demands made by the prosecution.

These Motions will be brought pursuant to the Minnesota Rules of Criminal Procedure, Minnesota Statutes 626.21, the Fourth Amendment to the Constitution of the United States, and Article I, Section 10 of the Constitution of the State of Minnesota and other legal authorities. They will be based on all of the files and records herein, the testimony and evidence presented at the Omnibus Hearing, and on a Memorandum of Law to be submitted.

Dated this 7th day of November, 1975.

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RECORD OF PROCEEDINGS HAD UPON OMNIBUS HEARING*

The omnibus hearing, pursuant to Rule 11 of Minnesota Rules of Criminal Procedure, came on for hearing before

*This record is condensed from the Transcript of Proceedings Had Upon Omnibus Hearing, which is a part of the file, and which is certified up for Petition for Certiorari to the Supreme Court of the United States. The page numbers to the Transcript are identified T. 1, T. 2, etc. Only that part of the transcript which bears on the issues in the petition is presented. Where narrative form is deemed sufficient to relate all relevant facts it will be usd. Where verbatim excerpts are produced they will be identified by the word "Verbatim" followed by the quoted text.

the Hon. C. A. Rolloff, District Court Judge, at the Kandiyohi County Court House in Willmar, Minnesota, on November 12, 1975.

Verbatim: T., 2-3: "The Court: Before doing that the Court should note that pursuant to proceedings had in chambers request was made that the court rule as a matter of law that the affidavit for the search warrant shows probable cause. The Court has so ruled and has determined that the affidavit on its face is sufficient to show probable cause.

Mr. Broeker: Your Honor, for the record we would note a formal objection to that ruling. . . . We understand the Court's ruling only goes to the question of probable cause.

The Court: That is correct, sir."

Robert J. Rau, called by Thomas Fabel, attorney for the State, testified that he was the audit director for the Department of Public Welfare, State of Minnesota, had held this position for approximately two years, was prior to that senior auditor for DPW for four years, and prior to that was internal auditor and accounting officer. T. 18, 19. Under DPW Rule 49, field auditors are employed to verify all the expenses reported by nursing homes; a field audit was performed by Raymond Otto at the Willmar Nursing Home from approximately December 10, 1974, through the first part of 1975. T. 31, 32. Mr. Otto communicated with Mr. Rau during the audit and reported numerous areas where the expenditures appeared to be questionable and detailed on work sheets what those areas were and put together written comments which covered the fact that there were a large volume of expenditures which he felt did not relate to patient care. He also made oral side comments on the review. T. 33-35.

Because Mr. Rau did not know whether they had identified all the cost areas that may not have been related to patient care, at the suggestion of the Nursing Home's prior accountant. Rau prepared a questionnaire in affidavit form and submitted it to Norma Ruud, the accountant and her attorney, who responded to it and returned it. Upon review of the affidavit of Norma Ruud, Rau and Otto reached the conclusion that it was contrary to what they were able to identify in the field audit. T. 36. 37.

Because of the heavy work load, Rau did not proceed further until August, 1975, when he conferred with Thomas Fabel, assistant attorney general. T. 37. Rau executed the affidavit in application for a search warrant of the Willmar Nursing Home and the Ruud residence in Willmar, which he participated in preparing and as to which he provided much of the information that went into the affidavit, which information was obtained from the field audit documentations which Otto put together plus his verbal comments to Rau. T. 38, 39. Two affidavits were prepared, identical as to what he testified to. T. 40.

Verbatim, T., 40-56 (Rau on direct):

"By Mr. Fabel:

(Continuing) We're going to go through these thirteen paragraphs, Mr. Rau, that appear on Pages 1, 2 and 3 of your application for warrant. I'm going to ask you about what you're looking for in each of those paragraphs, why it was that you said you thought you needed those records, what your reasoning was at the time, and what type of records you were anticipating locating at the Willmar Nursing Home and the related offices in the Ruud facility during the course of the search. . . .

Q. (Continuing) Returning, Mr. Rau, to paragraph one, I read the material portion of that paragraph one. Why is it that you were asking for that information, and what is it that you thought you might find?

A. Well, what we were doing was trying to ascertain there with all the invoices and all sales slips which would allow us to determine the volume of purchases that had been made. We had evidence in our field audit that there were documents before this Court which indicated items that were purchased that we deemed unallowable, that we could identify as not related to patient care.

Q. Paragraph two states all documents evidencing the identity of the persons responsible for making purchases of goods and services for Willmar Nursing Home since August 1, 1971 to the present.

Why was it that you asked for that information, and what was it that you thought would be found in the course of the search?

A. Again we were looking for invoices and sales slips which would identify the goods that were purchased, and on certain occasions we felt that it would identify the person who went to the vendor and procured the item or signed for that item.

Q. Paragraph three says all records and documents indicating the identity of any person who made a purchase of goods or services in the name or on the account of Willmar Nursing Home since August 1, 1971.

Why did you ask for that, and what were you looking for,

A. Again we were looking for sales slips and any type of invoices of any kind which would identify the people who may have participated in this claim for reimburse-

ment of unallowable costs. Again we were able to identify through our field audit that such items did exist, and that they were, or there was an identification of an individual which we felt was not a bonafide nursing home employee.

Q. Number four reads all records and documents indicating the identity of the persons who received goods or services purchased in the name or on the account of Willmar Nursing Home since August 1, 1971.

Why did you ask for that information, and what were you seeking?

A. In this particular area we were again looking for any additional sales slips, receiving slips, or even possibly time cards showing a time served in the nursing home for an employee. Again, to identify the people who received the goods or the people that were claiming compensation for services that they purported to render, which we felt through our field audit we could evidence that they did not provide those services or bring those goods to the nursing home.

Q. Number five calls for all records and documents of cash or credit receipts and disbursements received or made by Willmar Nursing Home, its agents, employees or owners, since August 1, 1971.

My same questions apply to that paragraph.

A. We were trying to ascertain or receive all checks that indicated disbursements from the home. We were again including sales slips. We wanted to receive their cash disbursements or receipts journal so we could identify the amount of money that had been expended for the particular items which we identified as unallowable, and likewise we wanted to identify whether items that we deemed not related to patient care may have been reimbursed to

the nursing home by the management of Willmar Nursing Home.

Q. Number six states—Returning to the statement just made—Strike my previous comments.

Were you looking for items of reimbursements? Do you mean by that you were hoping to discover whether the management might have been paying the nursing home back then for things which were not related to patient care, Is that correct?

A. Yes.

Q. Number six states all bookkeeping and accounting records of Willmar Nursing Home which relate to the information required or provided upon each D.P.W. Rule 49 report or attachments, submitted to the Minnesota Department of Public Welfare or Kandiyohi County Welfare Department by Willmar Nursing Home since August 1, 1971.

My same questions apply to that.

A. Okay, we were looking for payroll work sheets, checks, cash disbursements journals, accounts payable ledgers, for any information which would identify the recipients of the compensation or identify the amount of money that was expended for a particular item that may have been disbursed by Willmar Nursing Home. Again, we had evidence that seemed to indicate that there were such expenditures that were not related to patient care, and we wanted to identify the amount and the participants in that disbursement.

Q. Number seven provides all records of inventory and cost analysis prepared or generated in relation to the determination of expenses incident to patient care at Willmar Nursing Home since August 1, 1971.

Why did you ask for that information and what were you hoping to find?

A. We were looking for inventory records or depreciation schedules or any work sheets which would identify the fixed assets which the facility had. It was our contention that we could identify costs that were not related to patient care and assets that were purchased and reimbursed through the rate determination formula for assets that were not used in patient care.

Q. Did you have evidence that some of this was going on in the nursing home?

A. Yes.

Q. Number eight is all records, correspondence and other documents indicating who had knowledge of persons purchasing and/or receiving goods and services obtained in the name or on the account of Willmar Nursing Home since August 1, 1971.

What were you looking for in that paragraph?

A. Various items including organizational charts, job descriptions, and possibly authorized signature cards to identify within the facility who had the authority to sign for goods, who had the authority to sign checks for the disbursements or goods and services, who had the authority to receive goods within the nursing home. Again, we had evidence which indicated that there were individuals purchasing items that were not related to patient care and yet were disbursed through the records of Willmar Nursing Home.

Let me ask you a related question. You're speaking in fairly broad generalities, so will you tell us, were you just looking for evidence concerning one or two transactions or one or two questionable expenditures?

A. No, our field audit indicated there were a large volume not related to patient care, and our investigation or our field audit seemed to indicate that we may be just touching the tip of the iceberg or we may not have even—or we may have covered everything, and our field audit was, or our search warrant was to procure all the documents to determine whether there were additional claims beyond those we identified through our field audit.

Q. Thank you. Number nine calls for all records, correspondence, memoranda and other writings or things indicating who wrongfully received goods, services or funds from Willmar Nursing Home since August 1, 1971.

What were you looking for in that paragraph and why?

A. What we were trying to ascertain there again with time cards, invoices, checks, payroll records, and any other documents which would indicate who provided services at Willmar Nursing Home as an employee, disbursements made to them, and generally again we were trying to identify the amount and the participants in this reimbursement for unallowable costs.

. . .

I'll now read you paragraph number 10 and ask you to answer those questions with respect to that paragraph. It reads, all records, agreements or other writings which identify the persons who have conspired together to obtain funds from a public body through fraud, deception, misrepresentation or theft since August, 1971 to the present.

A. Again we're looking for checks, invoices, payroll records, time cards. We had evidence which indicated again that there were people that had received compensa-

tion, and we couldn't tie in services that they rendered with patient care. We were looking for these invoices to indicate purchases for items that were not related to patient care. Again, we had evidence from our field audit which indicated that these were items that were not related to patient care.

Q. Paragraph number 10, Mr. Rau, asks for documents identifying persons. Why did you ask for documents which would identify persons?

A. Again, we were trying to identify the participants in this crime which we felt had been committed against us.

Q. Paragraph 11 reads all records, agreements or other writings which identify the persons who have a direct interest in the assets and liabilities of Willmar Nursing Home. Why did you ask for that, and what was it that you believed existed in the way of evidence that would be seized?

A. Within our own files we knew who the owners of Willmar Nursing Home were, what the percentage of ownership was; for example, Mr. and Mrs. Ruud, what they had and what their children had. I guess what we were looking for was additional documentation such as corporation minute books which might identify these people, plus there could be other people, like creditors, who we felt might have kind of a related interest in the nursing home. We had evidence to the effect that these individuals such as the children, were owners of the facility and likewise receiving compensation, and our evidence indicated that they were not providing the services to the nursing home. So again we were trying to identify the participants.

Q. Paragraph 12 provides all audits, bookkeeping reports, and ledgers showing any debits or credits of Willmar Nursing Home. Why did you ask for those records, and what specifically was it that you sought to search through and seize?

A. We were looking for additional audited or unaudited financial statements which their accounting firm may have put together. We were interested in what kind of audits they may have had and the comments that those audits may have indicated. Again, our evidence indicated that there were expenditures not related to patient care. and we wanted to ascertain whether their financial statements would indicate the same comments.

Q. Paragraph 13 asks for all bookkeeping, accounting, tax, payroll and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons, other than the Willmar Nursing Home.

A. We were again looking for payroll records, cash disbursements journal, accounts payable journals of other businesses owned by Norma, Royce Ruud or their children. We had evidence that indicated that there were people on the payroll in addition to the children who were not providing services to the nursing home, but rather were providing services in other businesses owned by Norma and Royce Ruud.

Q. Were you seeking evidence in that paragraph of crimes committed in ways not related to the nursing home?

A. Yes.

Q. I'll rephrase that question. Were you seeking evidence of crimes committed other than the general nursing home fraud which you were investigating?

A. We were trying to relate this to the nursing home. I guess our feeling was that crimes were committed against us in the reimbursement area. What we were trying to do or to discover was those reported under the Rule 49 cost reporting mechanism not related to patient care.

Q. Mr. Rau, you have previously testified that you have been an auditor or worked in the accounting and auditing field for approximately eight years. During that period of time I presume that you have developed a good deal of expertise. Could you tell us from that background of expertise whether in trying to unearth the type fraud that you have concluded exists in this facility whether that type fraud can be evidenced by one discrete set of documents or one discrete set of books in a nursing home?

A. No, it would be my opinion that there is a large volume of records that would support, you know, your total claim, your total expenditures, your total statistics, your total employee complement, the total salaries paid to those individuals. So there would be a large volume of records that a nursing home or any other business might keep.

Q. Yes. And are there records of one type, or of many types, when you're actually trying to determine what the true financial picture of a nursing home is, that you're particularly looking for?

A. Many types.

Q. So is it possible, Mr. Rau, when you approach any nursing home, in your professional opinion, to identify by precise description those documents which in your mind would give you the totality of the financial picture of the nursing home? By that I mean could you describe in terms

of invoices or checks, phrases of that sort, all of the documents you would need and all the documents which would evidence the totality of the financial picture of the nursing home?

A. You'd go into a lot of detail trying to indicate which, or you know, what degree of information you would need. There's a large volume of payroll records that you would want to accumulate, and different types of ledgers. There's a large volume of, let's say checks, that would be included in a year's period, that you would have to review.

Q. From your experience as a nursing home accountant and auditor, Mr. Rau, can you tell us whether all nursing homes have identical records?

A. I would say no.

Q. Is there a wide variety of the type record keeping which is performed by nursing homes?

A. I think it varies from nursing home to nursing home. I think they all have an accumulation of records that, you know, in terms of a cash disbursement journal, which are acceptable, but I think, you know, they have varying people taking care of them in varying ways, and you have to adapt. I think on the different audit assignments you have to adapt to the different nursing homes you review. You have to get a feel for how this nursing home and their personnel maintain the records, and to a degree it's a reflection of how their accounting firm may have set up their bookkeeping and accounting system.

Q. We've gone through the 13 paragraphs in your affidavit now, Mr. Rau. This is the application that you made in support of the search warrant, is that correct?

A. Yes.

Q. Who did you make that application before?

A. Judge Buchanan.

. . .

By Mr. Fabel:

Q. (Continuing) Mr. Rau, did you sign this affidavit in the presence of Judge Buchanan?

A. Yes, I did.

Q. Before you signed it did you have discussions with Judge Buchanan about the contents of the affidavit?

A. Yes, I did.

Q. Did you also discuss matters related to the audit and to the suspected crime, other than matters specifically in the affidavit itself?

A. The Judge did get into a dialogue with myself on these items, plus background on field audit.

Q. Do you recall how long it was that you discussed this matter with Judge Buchanan before you actually signed the affidavit?

A. Oh, it could have been about a half hour.

Q. At any point were you put under a sworn oath?

A. Yes.

Q. At what point did that occur?

A. Oh, it could have been maybe ten, fifteen minutes of just informal discussion, dialogue, between us.

Q. Okay. It's your testimony that the oath was administered after ten or fifteen minutes?

A. Approximately, yes.

Q. Did you further testify then after you were put under oath?

A. Yes, I did.

Q. Is it your testimony that your discussions related to the affidavit and to related matters?

A. Yes, it did."

Approximately at 6:30 on August 28, 1975, Rau, with a peace officer by the name of Rick James appeared at the personal residence of Royce and Norma Ruud and participated in a search of a portion of the house which Royce Ruud identified as an office in which the Ruuds had a certain number of records, which took until about ten or ten-thirty in the evening. T. 56, 57.

Periodically, Rau checked back with the search warrant to refresh his memory as to the scope of the audit and to get a feel of what he was looking for. He attempted to keep his search within the scope provided by the warrant and made an inventory of all the documents he took. T. 58.

Verbatim: T. 59-60 (Rau on direct):

"Q. Where were you physically located when you went into the nursing home, Mr. Rau?

A. I went down into the storage room where I was told you and Barb Gill were located, and I helped you people inventory items that we were taking.

Q. Were all of the records that were in that storage room taken out of that storage room?

A. My recollection is everything that I looked at I took from there.

Q. My question is, were all of the records that were in that storage room taken out?

A. Yes, they were. I guess the items—

Q. Were any records left in the storage room?

A. There must have been. You know, its a big area. I guess you know we pulled out certain drawers, or whatever those were, and they all had envelopes with invoices in them. And my recollection is that all those invoices

were applicable to specific years in which we were conducting the audit, and so we took all of them. I was kind of playing a secondary role there. I was not the initial person to review it, so I was just acting as kind of a clerk there to inventory the items that were being taken.

Q. What time did you leave the Willmar Nursing Home? Do you recall?

A. My recollection is it was approximately 2:00 o'clock. 1:30, 2:00 o'clock, something like that."

Rau did not have any reason to believe that the Nursing Home was in any way destroying any of their receipts or invoices, and was not aware of specific things requested that were not provided, but he guessed he was of the opinion that they may have not been getting everything. T. 95.

There were two applications and affidavits for search warrants prepared by Barbara Gill of the legal section of DPW after Rau discussed it with Fabel and Gill. Rau reviewed different parts of the applications on different occasions. T. 95, 96.

Verbatim: T. 98-99 (Rau on cross):

"Q. (By Mr. Broeker, continuing) I believe it was your testimony, Mr. Rau, that you in fact did make decisions during the time of the search and seizure as to which documents should be taken, did you not?

A. Yes.

Q. Do you recall making any decisions as to which documents should not be taken?

A. Yes.

Q. What would some of these be?

A. In the small office that adjoins the home there

were approximately two files there that I went through. Two, I think, approximately four-drawer files, were in there, and items were consolidated in little, kind of manilla folders, and I would go through the folder to see what was in there, and if I could identify an expenditure or documentation relating to Willmar Nursing Home I'd take the file. If the file was completely irrelevant to our search, to business that they conducted which overlapped with things we knew about Willmar Nursing Home, that they didn't have any type of that information, I would not take them.

Q. Is it your testimony that if you saw one document that related to what you were looking for you would take the entire file?

A. Rather than take one little thing out of the folder I'd take the whole folder, yes."

Verbatim: T. 101-105 (Rau on cross):

"Q. (Continuing) Directing your attention to Defendant's Exhibit 4, Mr. Rau, I believe it was your testimony that you spent the bulk or a large portion of your time at the house, at 1004 Ella, is that correct, during the time of the search and seizure?

A. Yes.

Q. Was there anybody else at the residence who actually was going through the records at the residence and taking materials, during the course of the seizure, beside yourself?

A. For a very short period of time I believe there was somebody else looking at records.

Q. Who made the decision at the residence as to which records would be taken?

A. I did.

Q. Look at Item 6, for example.

A. Yes.

Q. That was material taken from the residence, was it not?

A. Yes.

Q. Can you tell me under which portion of the search warrant you made the determination that the file folder containing Betty's letters was taken?

. . .

A. It's my opinion that I had checked and felt that Number 10 was the one that qualified there.

Q. (By Mr. Broeker) And that was under the heading of all records, agreements or other writings which identify the persons who have conspired together to obtain funds from a public body through fraud, deception, misrepresentation, or theft since August, 1971, to the present?

A. That is correct.

Q. Do you recall, Mr. Rau, if there was anything in that particular file folder other than personal communications from Betty Ruud?

A. I don't recall if there was anything else.

Q. Do you recall the statement in your affidavit that in no event, however, does your affiant seek personal diaries, letters or other private writings made solely for personal use?

A. I'm aware of that.

Q. Do you recall if you reconciled that section of your affidavit with the seizure of Betty's letters?

A. Yes, I did.

Q. How did you reconcile that?

A. In reviewing that file I determined that the letter

was indicating her geographical location which at that time, the specific letter I'm thinking of, put her in Denver, Colorado, and indicated she was looking for employment there. And it appeared from the content of the letter that that was her personal residence for the time being. And in recollecting what I knew from our audit she was being compensated for services in Willmar, Minnesota.

Q. Had anyone ever denied to you that she was in Denver, Colorado, and not in Minnesota?

A. No.

Q. What about Number 17, file folder, Diamond Lake property, and so on, under what portion of the search warrant did you make that seizure? . . .

A. I think we could look at a number of areas here, records and documents evidencing purchases of goods and services made by any past or present agent or employee of the nursing home. My recollection would be that that file must have indicated some expenditures that may have been paid for by Willmar Nursing Home.

Q. Do you recall if it did?

A. No, there was just too much evidence gathered that night to specifically identify whether there was a specific item in that folder.

Q. Do you recall which item, which numbered item in the search warrant, that that would have come under?

A. I could start off with Number 1, and say that might qualify.

Q. But you don't recall?

A. No.

Q. What about Item 23, file folder, Minnesota Hospitals, can you recall under what number in the search warrant that you took those items?

A. No, I would have to see what was in the folder to know how it ties into our search warrant.

Q. What about Item 15, file folder, Randy's important papers?

A. Again, I don't know where it would fit in here. I'd have to see the folder to determine what was in the folder which brought it under the search warrant.

Q. How about Item 6, business custom policy and insurance manual?

A. Again, I don't know what it falls under. I'd have to see what was included in that document to realize how it was covered under the search warrant.

Q. Did you make the decisions on all items taken from the house as to whether or not they would be seized, was that your testimony?

A. Yes.

Q. Do you recall how much material was actually taken from the house?

A. My recollection is that we identified approximately sixty-two or sixty-three items on our inventory sheet.

Q. From the house?

A. Yes. That's a combination of folders and specific correspondence that may have been laying free on the desk."

The objective of DPW is to justify through underlying documentation the figures which appear in the Rule 49 Cost Statement. This is done through looking at invoices, sales slips, checks, cash receipts, journals, statistics, nurse's census, billings, cash disbursements, accounts payable journal, general journal, and a sampling of invoices and checks to provide an audit trail of those activities. T. 107-108.

Verbatim: T. 108-109 (Rau on Cross):

"Q. In the lengthy testimony which you have given to Mr. Fabel in regard to the thirteen items set forth in the application for search warrant you gave certain testimony as to items that you thought these particular areas covered. Do you recall that?

A. Yes.

Q. Were these the same items that you had in mind on the night that you signed the affidavit?

A. Yes.

Q. So in construing your testimony you were testifying as of the time you signed the affidavit, is that correct, rather than as you view it today?

A. Yes."

Verbatim: T. 111-114 (Rau on Cross):

"Q. You indicated, Mr. Rau, that you played a secondary role at the search and seizure at the nursing home itself, is that correct?

A. That is correct.

Q. Who was playing the primary role there?

A. My evaluation of that situation was that Mr. Otto was in one part of the home on a review of records, and upon my arrival Mr. Fabel and Mrs. Gill were in the storage room reviewing the records for appropriateness, and I was just taking them and inventorying them and putting them in a box. That was my participation there.

Q. Do you know who was making the determination as to which records should be seized at the nursing home?

A. I think Mr. Otto in his particular place and Mrs. Gill and Mr. Fabel were in the storage room, both pulling

out documents and making their determination as to whether we should take it.

Q. Was your advice requested in regard to any particular items that were taken from the nursing home as to whether or not they should be seized?

A. At the point in time at which I arrived there I don't recall ever being consulted on anything.

Q. Did you yourself consult Richard James as to what material should be taken from the house or from the nursing home?

A. I had a few conversations with Rick that evening, the evening of the search, feeling that he was a peace officer there and had conducted other search warrant proceedings. I may have questioned him on certain items, but I don't have any specific recall on that.

Q. Do you have any recall if either Mr. Otto or Mrs. Gill or Mr. Fabel consulted with Mr. James as to whether or not particular items should be taken?

Mr. Fabel: Object to that, Your Honor. It calls for hearsay. He's asking about conversations between four individuals who he is asked about, and a fifth person, a police officer, without asking whether Mr. Rau was there. It lacks foundation and it also calls for hearsay.

The Court: Sustained.

Q. (By Mr. Broeker, continuing) Did you observe any conversations between Mr. Fabel and Mr. James on the night of the search and seizure?

A. That was a long night. I recall everybody talking to everybody else, and I really don't off the top of my head recall what the exact conversations were about.

Q. Do you recall participating in any conversations

where you and Mr. James were present with other people?

A. There's a possibility that three of us got together and discussed things, but as for specific items, I don't recall.

Q. On August 28th did you hold any other position working for—Did you hold any other position with government other than being audit director of the Department of Public Welfare?

A. No, not that I recall.

Q. Were you ever designated as a peace officer by the State of Minnesota, the County of Kandiyohi or by the City of Willmar?

A. No.

Q. You testified as to a sealed box that was prepared at the house before you went over to the nursing home. Did you yourself seal that box?

A. Yes, I did.

Q. Did you yourself prepare the inventory that was done of the goods taken at or from the residence?

A. Yes, I did.

Q. Did Mr. James in any way participate in the preparation of that inventory from material taken at the house, to the best of your knowledge?

A. I recall where he was available there, and I think he did a certain amount of it. My recollection is that I know I started it and I can recall where I probably—I guess its my recollection that I was the one that inventoried all sixty-some items and documented them."

Raymond Otto, of 608 West Redwood, Marshall, Minnesota, DPW field auditor, operated a dairy business in

partnership from 1950 to 1962, managed it until 1966, was Lyon County Auditor from 1967 to 1971, and started with DPW in 1972. He conducted three or four field audits before he audited Willmar Nursing Home. T. 121-122.

He called Willmar Nursing Home December 9, 1974, and informed them he would be out the following Monday, and left there January 10, 1975, spending fifteen working days there. He checked with the county accounting officer and picked up a transcript of all the property owned by the Ruud family and the Willmar Nursing Home. Norma Ruud informed him as to who owned all the stock of the corporation. He received the ledgers and the journals and the payroll journals. He tried to tie the general ledger into the financial statement and when nothing correllated he met with the Nursing Home accountant. He visited the county welfare department to find out where the Ruud children were at the time, he having found they were paid salaries from the payroll ledger. He examined the checkbook and the checkstubs. He conferred again with the corporation accountant and reviewed his worksheets and trial balance and all the adjusting entries. He looked at records showing payments to a number of vendors. He found from examining the invoices that indicated to him expenditures not related to nursing care. He checked with the vendors to verify expenditures made and what they were for. He checked a number of these, and those he testified to were not exhaustive. He checked the farms owned by the Ruuds, and two lake cottages. He asked for loan notes and insurance policies, some of which were brought to him but not all. After receiving a call from

Norma Ruud from her attorney's office saying he had had enough time to complete the audit and should leave, he left on January 10, 1975. 123-140.

Otto wrote up a narrative report and also made a summary of what he would disallow. T. 144.

Otto participated in the search of the Nursing Home on August 28, accompanied by police officer, Rick James, and also John Kappers. Otto went to the basement in the bookkeeper's office. Two accountants and Norma Ruud were there. Accountants' records, spread over two desks, which records Otto had not seen before, were put in the accountant's brief cases. After conferring with Fabel, Otto searched the brief cases, reviewed the material there, and found the nursing home fixed assets ledger. When the search party was through they had about eight boxes, some three, four big ones, of materials jammed into a station wagon. T. 144-48.

Otto determined from cost classification of the disbursements to the Ruud children that the girls were essentially clerical office workers and the boys essentially maintenance men. T. 154. He received information as to the whereabouts of the children from the welfare social worker. T. 156.

Otto prepared a narrative report and financial summary and turned them in with the field audit papers, which he characterized as his written feelings of the problems and what he ran into at the Willmar Nursing Home. T. 168-169.

Otto helped Rau prepare the affidavit for the search warrant by selecting out from his audit file selective expenditures of the nursing home that he felt were or had criminal implications. T. 170.

Richard James, a police officer, was present at the County Attorney's office when Judicial Officer Buchanan issued the search warrant. T. 176. Also present were Ronald Schneider, County Attorney, Barbara Gill, Raymond Otto, Robert Rau, and Tom Fabel. T. 176. James typed in the names of Barbara Gill, Tom Fabel, Robert Rau, Raymond Otto, and John Kappers at the request of the County Attorney and the Judicial Officer. T. 177. After the search warrant had been read to Royce Ruud at the residence, Rau started his search and Fabel and James went to the Nursing Home. T. 178.

Verbatim: T. 180-181 (James on Direct):

"Q. Okay. And so far as the search itself was concerned, what role did you play in that?

A. Supervision.

Q. Okay. And was that both at the nursing home and at the private residence?

A. The nursing home predominantly. I returned to the residence when the inventory was to be made and receipt given to the Ruuds. I was at the residence at that time with Mr. Rau.

Q. You've used the term supervision. Could you describe what your supervision consisted of?

A. I assisted any way I could. And my name was the person or the officer that was to conduct the search, and the people that were with me were listed as assistants. And I checked items periodically as they were being put into the boxes, against the inventory, and in this manner I was more or less a supervisor of this.

Q. Okay. Then were you present when the inventory was prepared?

A. Yes, I was.

Q. At the nursing home?

A. Yes, I was.

Q. Could you tell us in a general way what went into that inventory?

A. Records, ledgers, files. Mainly I looked at the files by name, and as they were being put in the boxes I listed them on the receipt return.

Q. Okay. How about at the private residence then?

A. I checked with Mr. Rau each item that was being put into the boxes, by file name."

Verbatim: T. 184-187 (James on Cross):

"Q. Did you yourself actually go through any of the records at the facility during the search?

A. Periodically, yes.

Q. And what records did you go through?

A. I assisted on the ledgers. The files Miss Gill was looking at. I looked at them on occasion, and I assisted her in that.

Q. Did you make any determinations as to which records should be taken from the facility?

A. No, I did not.

Q. In the area where you were working with Miss Gill was it Miss Gill who was making that decision?

A. She, along with Mr. Fabel. She would check occasionally with Mr. Fabel, and they would check the warrant for scope.

Q. Now, you indicated that you went over to the house and helped Mr. Rau put material from the house into boxes, is that correct?

A. Yes, along with preparing the receipt.

Q. Did you yourself actually physically record the material that went on the receipt?

A. I don't believe so. I believe Mr. Rau did.

Q. What about the receipt that was done of the material taken from the nursing home, who prepared that?

A. I don't know. I believe Mr. Fabel and Mr. Otto.

Q. Did you similarly help to pack up the records taken from the nursing home?

A. I'm sorry, I didn't understand the question.

Q. As you did at the house, did you help pack up the records that were taken from the nursing home?

A. Yes, I did.

Q. Did Mr. Fabel check the inventory at the nursing home of the items that were taken?

A. Yes, he did.

Q. Did you sign the receipt inventory and return for materials taken from both the nursing home and from the residence?

A. Yes, I did.

Q. What did you do with the materials that were taken from the nursing home?

A. I released it to or turned it over to Mr. Rau.

Q. And when did you turn it over to Mr. Rau?

A. At 2:00 o'clock in the morning, on the 29th.

Q. Did you have a court order to turn it over to Mr. Rau?

A. No, I did not.

Q. Have you since obtained possession of the material taken?

A. It's been returned to Willmar, yes.

Q. When you were assisting Mr. Rau with packing

up the materials at the residence did you yourself check the contents of files, or did you simply inventory the files?

A. Inventoried the files themselves.

Q. How about over then at the nursing home, did you check the contents of the files?

A. No, I just looked at the items that were being put in the box.

A Did you yourself make any decisions during the course of the evening whatsoever as to what materials should or should not be taken from the facility?

A. No, I did not.

Q. Did you make any inquiry when you went to the residence in the first instance as to where the offices of Willmar Nursing Home might be located within the residence?

A. Personally I don't believe I did. I mean Mr. Fabel might have.

Q. You yourself did not?

A. I don't recall doing it, no.

Q. During the course of the search, Mr. James, did you yourself do any further review of the contents of the warrant to ascertain whether what was being taken fit within the warrant or not?

A. Occasionally we checked.

Q. You yourself checked it?

A. Yes.

Q. On how many occasions? Do you recall?

A. I don't recall. During the course of the evening.

Q. Was that in response to specific requests?

A. I looked it over, along with the attorneys, yes.

Q. And which warrant was that, the one at the house or the one at the nursing home?

A. The one at the nursing home. I believe the one at the house was conducted by Mr. Rau."

Barbara Gill, a special assistant attorney general, admitted to practice in the State of Minnesota on September 26, 1975, began working for the Attorney General's office in August, 1975, and was assigned responsibility for enforcement of DPW Rule 49. She participated in the search of the Nursing Home, but not of the residence. T. 188-190.

Gill assisting in drafting the search warrant, and in its preparation she worked closely with Rau. T. 192.

She searched the office area. T. 192. When she finished, she went down to assist in the basement. T. 194-95. She assisted Fabel in systematically going through the records in the storage room, but had difficulty in knowing if a file termed accounts receivable had accounts payable in them. T. 197. She stated accounts receivable clearly went to the crime they were suspicious of "because they showed, you know, what had been purchased and who from, what the item was and the cost. That would be indicated there on the invoice." T. 197-98.

On several cases when they had a doubt, she and Fabel consulted the warrant and made a decision together. T. 199-200.

In preparing the search warrant she consulted a model. T. 203.

Verbatim: T. 203-205 (Gill on Cross):

"Q. I believe you indicated that during the course of the evening you consulted the warrant from time to time?

A. Yes, I did.

Q. Do you have any formal training in accountancy, or bookkeeping?

A. I have some, yes.

Q. And what is the nature of that training?

A. I took a course in law school called accounting for lawyers.

Q. As used in a search warrant what do you understand the terminology "all audits" to mean?

A. It was my understanding that an audit is a report of—What's the best words to use? I have an idea, a concept of what an audit is. Let me say the function of an audit, and I guess I would think if I were asking for a document called an audit, that it would be a report of such a procedure.

Q. You say you have a concept. What is your concept?

A. That the books and records of a company or whatever entity, are examined. And I guess there are different kinds of audits. For example, some audits, the records are gone behind to see if what it says in the records is really reflected in the actual functioning of the place. For example, if a fixed asset inventory says that there are five tractors as part of some kind of an operation, you go out and look and see if the tractors are there.

Q. What does the terminology used in the warrant "bookkeeping reports" mean to you?

A. Any kind of a record that would be kept in the course of a bookkeeping activity.

Q. How about the term "ledgers"?

A. A ledger, in my understanding, reflects cash disbursements. I keep a check ledger at home. It says "ledger" on the outside, and in it I record who I write a check to, when I make a deposit, how it affects my bank account. That's my concept of ledger. Its a debit-credit kind of thing. Its money, shows a flow of money.

Q. What does the terminology as used in paragraph 7 of the warrant, "all records of inventory and cost analysis" mean to you?

A. To me a record of inventory would mean a record of the kinds of things in bookkeeping terminology that are classified as inventory, often that physical inventory. I believe there may be other kinds.

Q. How about the terminology, cost analysis?

A. I couldn't say right at that point. I have vague ideas what that might be. Some things are labeled that."

Verbatim: T. 208-211 (Gill on Cross):

"Q. You were referencing bookkeeping printed out ledgers, did you say?

A. They were computer printouts, and apparently there are bookkeeping systems that utilize a computer method. Now, what the correct name for what these big documents that the computer prints out is called, I would not claim to know.

Q. Did you yourself make the determination not to take that material?

A. No, I did not.

Q. Who made that determination?

A. I believe Mr. Fabel made that determination, possibly in consultation with Mr. Rau.

Q. But you don't know of your own knowledge if he consulted with Mr. Rau or not?

A. I cannot remember precisely that he did.

Q. Did you yourself receive any instructions by anybody else in the search party other than the instructions that are set forth in the warrants themselves as to what you should or should not take?

A. I received whatever instructions—Mr. Fabel gave general instructions before we went. Mr. James—or everyone was present at that time. And then as I testified earlier, I consulted with him.

Q. Did you consult or receive instructions from anybody else other than Mr. Fabel?

A. I believe Mr. James gave some general instructions in terms of, you know, of observing the warrant and then following the kinds of procedures that he was there to be particularly concerned about.

Q. Did you receive specifically any instructions from Mr. Rau or Mr. Otto?

A. No, I don't believe that I did.

Q. Were you asked prior to the time of the search and seizure by Mr. Rau or Mr. Otto to look for any specific things other than as they may have been spelled out in the warrant?

A. No, I don't think so. I had, however, in working with them—I was familiar with Mr. Otto's report, and the financial summaries he had made from his audit also, so I was aware of some of the things that were subjects of concern, that were felt to particularly be evidence of crime.

Q. Ms. Gill, were you ever told by Mr. Otto and by Mr. Rau—Well, strike Mr. Rau.—by Mr. Otto, as to what he had examined previously during the course of his audit, and by way of specific reference to the specific invoices and specific ledgers, for example?

A. No.

Q. Were you given any instructions by Mr. Otto specifically as to what material he had not been able to find at the nursing home that he wanted you to particularly look for during the search and seizure?

A. I wouldn't characterize it as instructions. It is possible that I may have been aware that Mr. Otto had asked for things and was not able to receive them. I cannot recall a specific conversation in which that happened. I certainly was not instructed to do anything by Mr. Otto.

Q. Now, the portion of the search that you were carrying on, were you empowered as you understood it to make the decisions as to what would be taken or what wouldn't be taken, seeking whatever further consultations you desired during the course of the evening?

A. Yes, I felt I was. The warrant included my name, and there's a clause that said you are hereby ordered to search the above-named premises."

Verbatim: T. 213 (Gill on Cross):

"Q. Did you say there were accounts receivable from several vendors?

A. Yes, each vendor. For each vendor there would be an account receivable envelope with the name of, you know, where things had been purchased.

Q. Do you know what an account receivable is?

A. Perhaps I'm confusing the terminology. Do I mean accounts payable?

Q. I don't know, I'm asking you.

A. An account receivable usually indicated that money is owed from that party to whoever is keeping the books, I believe.

Q. So it's your testimony you went through some material where vendors owed the Ruuds money?

A. No, and I may be confusing the issue as to how these drawers were labeled. I may be confused. I remember that the label on the drawers didn't seem to make much

sense to me, but I could see that these were envelopes labeled with the terms of vendors and that in these envelopes were invoices for items that had been purchased, and a record as to payment in some cases was on the outside of the envelope. They were sales slips, for the most part, just as anyone would get for buying something at a store."

Verbatim: T. 217-219, 221 (Rau on Cross):

"Q. Mr. Rau, you are still under oath from yesterday. During your testimony yesterday, you indicated that you reviewed certain items that were prepared by Mr. Otto prior to the time that you sent out the affidavit-interrogatories in this particular case. The testimony of Mr. Otto this morning would indicate that the document which has been handed to you, Defendant's Exhibit 5, is a report that was made by Mr. Otto. Is this one of the items that you referenced in your testimony yesterday, that you had?

A. This is one of the items.

Mr. Broeker: At this time, I would like to move for the admission of Defendant's Exhibit 5 into evidence.

Mr. Schneider: The state objects to that, Your Honor. We don't believe that Rule 9 of the Rules of Criminal Procedure permit the obtaining of what is obviously a work product by the defense.

The Court: Overruled. Exhibit 5 is received.

Q. Was there in addition other material, Mr. Rau, that you were referencing in your testimony yesterday?

A. Yes.

Q. What would this other material be?

A. There were a few worksheets that were specifically put together to identify expenditures which we could iden-

tify as unallowable, and there was, I think, a 2-page worksheet maybe identifying questionable vendors.

Q. Was there some field notes, as well?

A. I would say that this is probably the majority of the field notes, kind of a compilation of them. Within the field audit report that was put together by Mr. Otto there may be on different pages a comment here and there . . . .

. . .

By Mr. Broeker:

A. (Continuing) Mr. Rau, handing you a stack of material in a folder, is that the other material which you were referencing in your testimony?

A. Yes. . . .

Mr. Broeker: At this time we would like to offer the exhibit, Exhibit 6.

. . .

The Court: I think for the purpose of this hearing it is admissible. It will be received."

John Kappers, Willmar Police Department patrolman, was called by the County Attorney earlier on the day of August 28, 1975 and asked to be present at the search and was listed on the search warrant. He briefly reviewed the warrant, before going to the nursing home and the residence, but not after that. He went to the nursing home first, with Otto and Gill. He waited for a while in a chair in the office and at 6:40 at the request of Fabel went to the residence, where he took a chair in the living room, staying about an hour. He did no searching in the residence. He made no decisions as to what documents would be taken and retained from that search. From there he went to a basement office in the nursing home, where he remained a short time, left, and came back. He did not

do any searching and made no decisions as to what materials should be seized. He went to Juba's Supermarket to pick up some cardboard boxes. He then returned to the basement storage room where he stayed until approximately 1:30 A.M. He did no searching. The searching was done by Otto, Rau, Fabel and Gill. He made no decisions as to what was to be seized, nor was his advice at any time requested. He received his instructions from Fabel and James. At no time during the evening did he search or give anybody any instructions. He was there to protect any possible evidence. T. 222-29.

Royce Ruud was at the residence when the search was made there. Rau was there most of the time, James was there part of the time, as was Kappers. Fabel was there part of the time. T. 241.

Verbatim: T. 241-44 (Royce Ruud on Direct):

"Q. Specifically, did you have occasion to spend some time with Mr. Fabel during the search at the house?

A. Yes, I did.

Q. Where were you with Mr. Fabel in the house?

A. I was in the living room, in the dining room, and in the kitchen, in the garage, and in the utility room, in each room in the basement and in each room on the second floor.

Q. How did it come about that you went to these rooms with Mr. Fabel?

A. Mr. Fabel said that either it was customary or a must that he take sort of a tour of the whole house, and he informed me that I could go with him if I wanted to or he would go by himself, and I chose to accompany him.

Q. Are records of the Willmar Nursing Home kept in the kitchen of your residence?

A. No.
Q. In the garage?
A. No.
Q. In the basement?
A. No.
Q. In the bedrooms on the second floor?
A. No." . . .

Verbatim: T. 242-44 (Royce Ruud on Cross):

"Q. Could you tell us whether you observed Mr. Fabel take anything or remove anything from a room other than those two rooms in the house in which you kept your records?

A. Yes. He found two cardboard boxes on top of something in one of the rooms upstairs and he carried them down and went through those papers, and I believe he did remove something from those two boxes.

Q. Do you recall what kind of material was kept in those two boxes that were removed from the upstairs bedroom?

A. I think it was probably personal, as far as the family is concerned. I'm not sure. I didn't look in them at the time, and I haven't looked in them since.

Q. Now, would it be fair to say that some of these items that you refer to as personal contained communications from you to your children, or vice versa, while the children were living out of the state?

A. Are you referring to the two boxes upstairs?

Q. Yes.

A. No, I don't believe there was any correspondence. I'm not aware of what was in them, but if you're referring to correspondence that was taken in earlier testimony by

people I know that these did not come from those boxes up there.

Q. But there apparently was some correspondence taken from other places which would indicate that your children were out of state by virtue of the place from which the letters were mailed or to which the letters were mailed, is that correct?

A. Would you repeat that?

Q. Well, were there any letters from your children which were mailed to either you or to your wife while the children were outside of the State of Minnesota, which were seized?

A. Yes.

Q. Okay. Were there any letters specifically from your daughter Betty which were written to you or your wife while she was living in New York, the State of New York, which were seized?

A. I don't think so. Not that I can remember from the State of New York.

Q. Were there any letters mailed to you or your wife by your son Jerry Ruud while he was in Rapid City, South Dakota, or near Rapid City, South Dakota, which were seized?

Mr. Broeker: Counsel, could we clarify? Are you talking from the two boxes, or just generally?

Q. (By Mr. Schneider) Generally, if you know.

A. I don't know if they seized any letters from Jerry or not.

Q. It's possible though?

A. It would be possible."

Verbatim: T. 245 (Royce Ruud on Cross):

"Q. You were given a copy of the search warrant, weren't you?

A. Yes.

Q. Did you read over that search warrant?

A. Yes.

Q. And did you then understand the scope of the search which the officers were directed to conduct?

A. I'm not sure I understand your question.

Q. Did you understand what types of material the officers were instructed to seize by that search warrant?

A. Well, my interpretation of it seemed to tell me that they could take about anything they wanted to."

OMNIBUS HEARING ORDER

On September 30, 1975 the grand jury of Kandiyohi County found an indictment containing three counts against the defendants. Count I charges the defendants with presenting false claims to a public body (M.S. 609.-465.) Counts II and III charge the defendants with theft under M.S. 609.52, Subd. 2(3). All three counts also charge the defendants under M.S. 609.05, being the statute relating to liability for crimes of another.

Prior to the meeting of the grand jury the state had secured two search warrants, one for the home of the Ruuds and one for the nursing home operated by them. Pursuant to the search warrants voluminous material was seized from the nursing home and also some from the Ruud home.

On September 24, 1975 Judge Stahler made an order

requiring the return of some of the material seized under Paragraph 13 of the search warrant. The order of Judge Stahler denied the motion for return of the remainder of the property seized and suggested that the matter could be determined at an omnibus hearing.

An omnibus hearing was had on November 12 and 13, 1975. Mr. John M. Broeker of Broeker & Bachman, and Mr. George E. Hulstrand of the firm of Hulstrand, Anderson & Larson, appeared as attorneys for the defendants. Mr. Thomas L. Fabel, Deputy Attorney General, Barbara D. Gill, Special Assistant Attorney General, and Mr. Ronald H. Schneider, County Attorney for Kandiyohi County, appeared as attorneys for the state.

The Court having duly considered the files and records herein, finds that there was sufficient evidence to show probable cause for the issuance of the search warrants, and the Court further finds that the search and the resulting seizure of defendants' property and the warrants upon which they were based were valid and legal in all respects.

At the time of the omnibus hearing the defendants presented a number of motions in writing. The Court having duly considered said motions, and upon a consideration of all files and records herein,

IT IS HEREBY ORDERED:

I.

That the motion for an order suppressing the use as evidence of all property seized under the search warrants, including any information or evidence obtained as a consequence of said search and seizure, and the return of said property to the defendants, is in all respects denied.

2.

That the motion for an order suppressing the affidavit answers to the interrogatories, submitted by Norma Ruud to the Department of Public Welfare, dated April 1, 1975, is denied.

3.

That the motion for an order dismissing the indictments and all counts thereof upon the various grounds alleged in the motion, is in all respects denied.

4.

That the motion for an order directing that the state furnish defendants a specific enumeration of costs reported by the defendants which are alleged to have been incurred in connection with the operation of the defendant nursing home, is granted, to the extent that such information is not in the grand jury transcript or otherwise has not been made available to the defendants.

IT IS FURTHER ORDERED that this case is hereby set for trial commencing Tuesday, February 10, 1976 at 9:30 a.m. at Willmar.

Dated December 31, 1975.

C. A. ROLLOFF
Judge

MEMORANDUM

The Fourth Amendment to the Constitution and Article 1, Section 10 of the Minnesota State Constitution provide that it is the right of the people to be secure against unreasonable searches and seizures and that no warrant shall issue but upon probable cause supported by oath, and particularly describing the place to be searched and the things to be seized. The affidavit by Mr. Rau, the Audit Director of the Department of Welfare, shows probable cause for the issuance of the search warrant. The affidavit is quite detailed and cites numerous instances where the defendants included in the statement required to be submitted to the Department of Public Welfare items of expense which have no relationship to patient care in a nursing home and that as a result defendants received reimbursement for welfare patient care at a higher rate than they were entitled to. While some of the information contained in the affidavit was secured from Mr. Otto, he must be deemed to be a reliable person because he worked under Mr. Rau.

Defendants claim that the search was under a general warrant and that it did not comply with the Fourth Amendment. The warrants, while broad in scope, are as specific as underlying circumstances permit. The specificity required must be resolved in relation to the facts of the case. The affidavit for the search warrant indicates that the nursing home is a family corporation and that Royce Ruud is the president and his wife Norma Ruud is secretary. The affidavit further indicates that payments for personal items have been made and included in the basis for the cost of nursing home care for welfare patients. Under such circumstances the records of the nursing home operation and the personal records of defendants are bound to be intertwined. Under those circumstances a search of the records and documents must necessarily include a wide range of activities.

Reference has been made to the case of *VonderAhe v. Howland*, 508 F.2d 364 (9th Cir. 1974). That case involved a dentist who was charged with failure to pay tax on all business income. That case did not involve a family business operation and commingling of business and personal expenses as in the present case. The mandates of the Fourth Amendment are complied with when there is a reasonable connection between the items to be seized and the alleged criminal behavior. *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642, 18 L. Ed. 2d 782. Furthermore, the particularity required depends upon the kind of goods sought and the type of crime under investigation. *State vs. Wiley*, 295 Minn. 411, 205 N.W. 2d 667.

Defendants claim that the search and seizure was improper because the warrant did not authorize a nighttime search. However, the search and seizure began during daylight hours, and the fact that they continued into the night did not make it unreasonable. The search was conducted at a time when there would be the least interference with the daily routine of the nursing home.

The defendants also claim that the seizure of personal records and documents is violative of their Fifth Amendment privileges against self incrimination. Judge Stahler ordered the return to the defendants of purely personal matters seized pursuant to Specification No. 13 of both search warrants. Therefore whatever records of a personal nature that remained are those that relate to the business operation. Such records were obtained by reason of the proper execution of a valid search warrant. There is no violation of the Fifth Amendment privilege against self incrimination by reason of the execution of a valid search

and seizure. *Shaffer v. Wilson*, 523 F. 2d 175 (10th Cir. 1975). The application for the search warrant expressly excluded personal diaries, letters or other private writings made solely for personal use.

Defendants claim that the answers to the interrogatories submitted by Norma Ruud were illegally obtained and that the fruits thereof should be suppressed as evidence. At the time the answers were given there was no actual, restraint, submission to custody or police action that had begun to focus upon or restrain this defendant's movement so as to necessitate a Miranda warning. She had counsel available to her. Miranda requirements do not extend to a pre-custody investigative setting. *Kubik v. U.S.*, 395 F. 2d 170 (8th Cir. 1968).

The testimony before the grand jury is sufficient to show that there is probable cause to believe that offenses had been committed and that the defendants committed them. Some point was made that Mr. Fabel's name did not appear as a witness on the indictment. This omission is without prejudice to the defendants because they have had a transcript of the grand jury proceedings available and that shows that the very first witness was Mr. Fabel. C. A. R.

ORDER ON DEFENDANTS' MOTIONS

In the above matters each defendant was convicted upon trial by jury of presenting a false claim for audit and allowance under M.S. 609.465 and of theft under M.S. 609.52.

A motion was made on behalf of defendant, Royce Ruud, for an order for entry of a judgment of acquittal

on the ground that the evidence is insufficient to sustain a conviction on either count, and also a motion for a new trial. A motion was made on behalf of defendant, Norma Ruud, for judgment of acquittal on the ground that the evidence is insufficient to sustain a conviction, and also a motion for a new trial. Similar motions were made on behalf of defendant, Willmar Nursing Home, Inc. The motions were heard at Willmar on March 30, 1976. Mr. George E. Hulstrand of the firm of Hulstrand, Anderson & Larson appeared on behalf of the defendant Royce Ruud. Mr. John M. Broeker of the firm of Broeker and Bachman appeared on behalf of the defendant Norma Ruud. Both of said counsel appeared on behalf of defendant Willmar Nursing Home, Inc. Mr. Ronald H. Schneider, County Attorney for Kandiyohi County, and Ms. Barbara Gill, Special Assistant Attorney General, appeared on behalf of the State. At the close of oral arguments briefs were to be filed. The last brief was received on April 30, 1976.

The Court having duly considered the oral arguments, briefs and all the files and records herein,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1.

That the motion on behalf of Norma Ruud for judgment of acquittal is denied.

2.

That the motion for a new trial as to Norma Ruud is denied.

3.

That the motion on behalf of Willmar Nursing Home, Inc. for judgment of acquittal is denied.

4.

That the motion for a new trial as to Willmar Nursing Home, Inc. is denied.

5.

That the motion on behalf of Royce Ruud for judgment of acquittal is denied.

6.

That the motion for a new trial as to Royce Ruud is denied.

IT IS FURTHER ORDERED that Norma Ruud and Royce Ruud personally appear before this Court on Friday, June 4, 1976 at 1:30 o'clock, p.m. at Willmar for imposition of sentence.

At the same time the Court will impose sentence on Willmar Nursing Home, Inc.

Dated May 14, 1976.

C. A. ROLLOFF
Judge

JUDGMENT

The above entitled matter came on to be heard before the Hon. C. A. Rolloff, Judge, at 1:40 o'clock P.M. on January 21, 1976 at the Court Room in the Court House at Willmar, Minnesota, during the September 1975 General Term of said court, the above named defendants having been accused of the crime of:

Count I. Presenting false demand for audit to a

public body in violation of Minnesota Statute 609.-465 and 609.05 (1974).

Count II. Theft in violation of Minnesota Statute 609.52 Subd. 2(3) and 609.05 (1974).

Count III. Theft in violation of Minnesota Statute 609.52 Subd. 2(3) and 609.05 (1974).

as charged in the indictment filed in this Court by the County Attorney on October 1, 1975.

The defendants appeared in person and with counsel, Mr. John Broeker of the firm of Broeker, Bachman & Zerby and Mr. George Hulstrand of the firm of Hulstrand, Anderson and Larson.

Mr. R. H. Schneider, County Attorney and Ms. Barbara Gill, Special Assistant Attorney General, Dept. of Public Welfare appeared in behalf of the State of Minnesota.

Mr. Schneider presented a copy of the indictment to the defendants and their counsel and Mr. Schneider then read the indictment in open court.

DEFENDANTS ENTERED A PLEA OF NOT GUILTY TO THE FOLLOWING COUNTS:

Mrs. Ruud, Count I, Count II, Count III.
Mr. Ruud, Count I, Count II, Count III.
Mrs. Ruud, on behalf of the Wilmar Nursing Home, Count I, Count II, Count III.

Defendants were released on their own recognizance.

Defendants again appeared before the Hon. C. A. Rolloff, Judge, at the aforesaid court room on the 10th day of February, 1976, together with their counsel, Mr. John Broeker and Mr. George Hulstrand.

Mr. Ronald H. Schneider, County Attorney and Mr. Thomas L. Fabel, Deputy Attorney General appeared in behalf of the State of Minnesota.

The following jurors were duly impaneled and sworn:

William Hegstrom	Mrs. Karen Bredeson
Mrs. Ann Bonnema	Randolph Ellefson
David Orville Nelson	Melvin Bangston
Mrs. Dorothy Lippert	Mrs. Sue Hyland
Miss Judy Ann Adams	Melvin Brower
Stanley Marcus	Leon Schultz

Alternates: Linda Bergquist, Wendell R. Halldin

Evidence was adduced, and the matter submitted to the jury.

The jury retired to deliberate at 9:45 o'clock a.m. on March 11, 1976; and returned with the following verdict at 3:10 p.m. on said day, the Defendants being present at the time the verdicts were returned.

VERDICTS

State of Minnesota — In District Court of Said County
County of Kandiyohi — Eighth Judicial District

State of Minnesota,

against

Norma Ruud,

Defendant.

We, The Jury impaneled and sworn to try guilt or innocence of the above named defendant find the said de-

fendant Norma Ruud guilty as charged in the indictment of Count I: Presenting False Demand for Audit to a Public Body.

Dated at Willmar, Minnesota this 11th day of March, 1976.

LEON H. SCHULTZ
Foreman

State of Minnesota
County of Kandiyohi

In District Court of Said County
Eighth Judicial District

State of Minnesota,

against

Norma Ruud,

Defendant.

We, The Jury impaneled and sworn to try the guilt or innocence of the above named defendant find the said defendant Norma Ruud guilty as charged in the indictment of Count II: Theft of more than $2500.00.

LEON H. SCHULTZ
Foreman

State of Minnesota
County of Kandiyohi

In District Court of Said County
Eighth Judicial District

State of Minnesota,

against

Royce Ruud,

Defendant.

We, The Jury impaneled and sworn to try the guilt or innocence of the above named defendant find the said defendant Royce Ruud guilty as charged in the indictment of Count I: Presenting False Demand for Audit to a Public Body.

Dated at Willmar, Minnesota this 11th day of March, 1976.

LEON H. SCHULTZ
Foreman

State of Minnesota
County of Kandiyohi

In District Court of Said County
Eighth Judicial District

State of Minnesota,

against

Royce Ruud,

Defendant.

We, The Jury impaneled and sworn to try the guilt or innocence of the above named defendant find the said defendant Royce Ruud guilty as charged in the indictment Count II: Theft of more than $2500.00.

Dated at Willmar, Minnesota this 11th day of March, 1976.

LEON H. SCHULTZ
Foreman

State of Minnesota
County of Kandiyohi

In District Court of Said County
Eighth Judicial District

State of Minnesota,

against

Willmar Nursing Home,

Defendant.

We, The Jury impaneled and sworn to try the guilt or innocence of the above named defendant find the said defendant Willmar Nursing Home guilty as charged in the indictment Count I: Presenting False Demand for Audit to a Public Body.

Dated at Willmar, Minnesota this 11th day of March, 1976.

LEON H. SCHULTZ
Foreman

State of Minnesota
County of Kandiyohi

In District Court of Said County
Eighth Judicial District

State of Minnesota,

against

Willmar Nursing Home,

Defendant.

We, The Jury impaneled and sworn to try the guilt or innocence of the above named defendant find the said defendant Willmar Nursing Home guilty as charged in the indictment Count II: Theft of more than $2500.00.

Dated at Willmar, Minnesota this 11th day of March, 1976.

LEON H. SCHULTZ
Foreman

Imposition of sentence was deferred until March 30, 1976 and the defendants were released on their own recognizance.

The defendants again appeared before the court at the aforesaid court room on March 30, 1976.

Mr. George Hulstrand and Mr. John Broeker again appeared as counsel for defendants; and Mr. R. H. Schneider and Ms. Barbara Gill appeared in behalf of the State of Minnesota.

Sentencing was delayed because of motions pending.

The defendants again appeared before the Court at the aforesaid court room at 1:35 p.m. on June 4, 1976.

Mr. George Hulstrand and Mr. John Broeker again ap-

peared as counsel for defendants; and Mr. R. H. Schneider, County Attorney, and Ms. Barbara Gill appeared in behalf of the State of Minnesota.

The Court Thereupon pronounced the following

SENTENCE

Upon trial by jury the Willmar Nursing Home, Inc. was found guilty of Count I in the indictment, of presenting false claim, and also found guilty of Count II in the indictment, namely, theft.

Pursuant to the finding of the jury the corporation is hereby convicted of said offenses.

It is further ordered that as punishment therefor the Willmar Nursing Home, Inc. pay a fine of $2500.00 on Count I, and pay a fine of $7500.00 on Count II.

It is further ordered that judgment be entered in favor of the State of Minnesota and against Willmar Nursing Home, Inc. for the sum of $10,000.00 forthwith but that no execution be issued until such time as the time for appeal has expired or if an appeal is taken, then such time as after the determination of the appeal.

Norma Ruud, will you come forward.

(At this time defendant Norma Ruud stepped in front of the Court's bench.)

The Court: You, Norma Ruud, having been found guilty by the jury herein on Count I of the indictment for presenting a false claim, and on Count II of the indictment, namely, of theft, as those offenses are specifically set forth in the indictment, it is hereby considered and adjudged that you be and hereby are convicted of said offenses.

It is further ordered that as punishment on Count I, presentment of a false claim, you be committed to and

confined in the custody of the Commissioner of Corrections of the State of Minnesota until discharged by due authority in due course of law.

It is further ordered that said sentences shall run concurrently.

It is further ordered that as additional punishment on Count I, being that of presenting a claim, a false claim, that you pay a fine of $2500.00, and that on Count II, the offense of theft, that you pay a fine of $5,000.00.

It is further ordered that the issuance of a commitment be stayed and that you be placed on probation upon condition that the fines be paid within sixty (60) days after the time for appeal has expired, or if an appeal is taken, then after the determination of said appeal, and upon the further condition that you abide by the laws of the State of Minnesota and the rules and regulations of any department thereof, and upon the further condition that restitution be made to the State of Minnesota for any sums unlawfully obtained by you or the Willmar Nursing Home, Inc., which shall be payable when that sum has been determined either by negotiation or by litigation.

That will be all. You may be seated.

Royce Ruud, will you come forward.

(At this time defendant Royce Ruud stepped in front of the Court's bench.)

The Court: You, Royce Ruud, having been found guilty by the jury herein on Count I of the indictment for presenting a false claim, and on Count II of theft, as those offenses are specifically set forth in the indictment, it is hereby considered and adjudged that you be and hereby are convicted of said offenses.

It is further ordered that as punishment on Count I, presentment of a false claim, that you be committed to and confined in the custody of the Commissioner of Corrections of the State of Minnesota until discharged by due authority in due course of law.

It is further ordered that as punishment on Count II you be committed to and confined in the custody of the Commissioner of Corrections of the State of Minnesota until duly discharged in due course of law.

It is further ordered that said sentences run concurrently.

It is further ordered that as an additional punishment on Count I, being that of presenting a false claim, that you pay a fine of $2500.00, and that on Count II, the offense of theft, you pay a fine of $5,000.00.

It is further ordered that the issuance of a commitment be stayed and you be placed on probation upon condition that the fines herein be paid within sixty (60) days from the time that the time for appeal has expired, or if an appeal is taken, then after the appeal has been determined, and upon the further condition that you abide by the laws of the State of Minnesota and the rules and regulations of any department thereof, and upon the further condition that restitution be made to the State of Minnesota for any sums unlawfully obtained by you or the Willmar Nursing Home, Inc., which shall be payable when that sum has been determined either by negotiation or by litigation.

That is all.

It is further ordered that a stay of thirty (30) days is granted.

Mr. Broeker: Your Honor. is the Court going to act or rule on the return of the documents?

Mr. Schneider: May I make a statement, Your Honor?

The State has completed the inventorying of documents and they are in a state, I believe, they could be returned today.

One thing; that is, this condition, Your Honor, if we could have this understanding, that is, from the Court, by way of an order to the defendants that those documents which we have inventoried would be kept in a place of safekeeping so that we would have access to those in the future in the event of a new trial. That is the only condition we request, Your Honor, that they not be destroyed and would be available. That's what we're concerned about.

The Court: It is so ordered.

Mr. Broeker: We can give those assurances, counsel.

State of Minnesota,

Respondents.

vs.

Norma Ruud, et al.,

Appellants.

Royce Ruud, et al.,

Appellants.

No. 47030

Supreme Court of Minnesota.

Oct. 21, 1977.

Rehearing Denied Dec. 2, 1977.

Syllabus by the Court

1. The affidavit stated sufficient facts upon which to base a finding of probable cause to issue a search war-

rant, and the warrant issued stated with sufficient certainty the place to be searched and the things to be seized.

2. The audit director of the audit division of the Department of Public Welfare was properly permitted to testify as to his opinion regarding the nature of questionable expenses claimed by a nursing home on its cost report required by Minn. Reg. DPW 49. The trial court did not err in admitting into evidence a large chart purporting to summarize the testimony of the audit director and others where defendants did not request a limiting instruction nor object specifically to the conclusory title on the exhibit.

3. The trial court committed no reversible error in its evidentiary rulings.

4. The trial court committed no reversible error in its instructions to the jury.

5. The jury was not "systematically skewed," and defendants were not denied a fair and impartial jury by the method of jury selection.

6. The evidence supports the conviction of all the defendants.

Broeker, Hedges & Grant, John M. Broeker, and Eleni P. Skevas, Minneapolis, for Norma Ruud et al.

Hulstrand, Anderson & Larson and George E. Hulstrand, Willmar, for Royce Ruud et al.

Warren Spannaus, Atty. Gen., Thomas L. Fabel, Deputy Atty. Gen., Barbara D. Gill, Sp. Asst. Atty. Gen., Dept. of Public Welfare, St. Paul, and Ronald H. Schneider, County Atty., Willmar, for respondent.

Considered and decided by the court en banc.

PETERSON, Justice.

Defendants, Norma Ruud, her husband Royce Ruud, and Willmar Nursing Home, Inc., appeal from conviction by a jury for theft, Minn. St. 609.52, subd. 2(3); 609.05, and presenting false claims to a public body, Minn. St. 609.465; 609.05. Norma and Royce were each fined $7,500 and placed on probation. The nursing home was fined $10,000. We affirm.

Defendants Norma and Royce Ruud own and operate defendant Willmar Nursing Home. Royce Ruud is president of the nursing home; Norma is secretary-treasurer and administrator. The cost of nursing home care for eligible welfare recipients is subsidized by the Medical Assistance Program which is governed by Title XIX of the Federal Social Security Act and Minn. St. c. 256B, and administered in Minnesota by the Department of Public Welfare (DPW). DPW reimburses nursing homes, such as defendants', for each eligible patient at a "welfare per diem rate," calculated by dividing "reasonable" costs of patient care by "adjusted patient days."[1] Actually, the rate is determined by a complex formula embodied in Minn. Reg. DPW 49 (hereafter Rule 49), which was promulgated in 1972. A Rule 49 cost report must be submitted to the DPW by each participating nursing home each fiscal year. This multipage report lists various patient-day statistics but is devoted primarily to the itemiza-

[1]In fiscal year 1974-75, DPW reimbursed Willmar Nursing Home in the amount of $280,351.65, a substantial portion of the home's budget. During that same period DPW reimbursed nursing homes throughout the state a total of approximately $150 million for nursing home care rendered to some 23,000 welfare recipients who comprise about 60 to 65 percent of the total number of nursing home residents. Approximately 70 percent of Willmar Nursing Home residents are welfare recipients.

tion of patient-care costs categorized in Rule 49 as nursing, dietary, laundry and linen, housekeeping, plant operation and maintenance, or administration expenses. The cost accounting required by the Rule 49 report is an exhaustive one, covering everything from daily operating costs, such as salaries, to depreciation on capital assets.

DPW has issued regulations governing what costs may be considered patient-care related and thus may be included in determining the reimbursement rate. Minn. Reg. DPW 49, IV. A. 1(§4931a) provides:[2]

> "*Reasonable costs.* Costs to be allowable for rate setting purposes must satisfy the following over-all criteria:
>
> a. They must be necessary and ordinary costs related to patient care.
>
> b. They must be costs that prudent and cost-conscious management would pay for a given item or service."

The regulations explicitly disallow as allowable costs the "[p]ersonal expenses of owners or employees, such as homes, boats, airplanes, vacation expenses, etc." Minn. Reg. DPW 49, IV. C. 4 (§4933d). As a general rule, the higher the reported costs, the higher the reimbursement rate. The regulations do provide an incentive for rate-cutting, however, by imposing a ceiling on some allowable costs and establishing a maximum state-wide rate.

On December 30, 1974, Willmar Nursing Home submitted a Rule 49 cost report for its fiscal year 1973-74

[2]We have adopted the form of including the unofficial rule citation in parentheses after the official citation.

which ended July 31, 1974. The report was signed by Norma Ruud and prepared by accountant Oiva Penttila. Beginning in February 1975, DPW made monthly payments to the nursing home based upon the new reimbursement rate calculated in that report. Although the new rate became effective in February, it remained subject to adjustment for errors or omissions which might be determined through a subsequent audit. All reports are subject to desk audit by DPW and may, additionally, be subject to field audit, i.e., examination of supporting records. Adjustments are generally limited to 3 complete fiscal years preceding the date a field audit commences.

On December 10, 1974, 3 weeks before Willmar Nursing Home submitted its 1973-74 Rule 49 cost report, DPW auditor Raymond Otto was assigned to do a field audit of Willmar Nursing Home's records for fiscal year 1972-73. Otto worked several weeks with the home's poorly organized recordkeeping system and identified what he felt were numerous questionable items, primarily items that appeared to be personal expenses, paid by nursing home checks and included in the Rule 49 report. After Otto had been at the nursing home about 15 working days, considerably longer than the average time spent on an audit, Norma Ruud asked him to leave. Otto reported his findings to Robert Rau, audit director of the DPW audit division. On February 3, 1975, Rau submitted certain questions to Norma Ruud about some of the questioned expenditures. Upon the suggestion of accountant Penttila, Rau asked that Norma respond by affidavit. Copies of the questions were sent to Norma's attorney and

to Penttila. Norma's attorney responded pledging her willingness to answer any further questions.

Upon receipt and examination of Norma's answers to the submitted interrogatories, Rau and Otto believed a number of the responses were false and inconsistent with the underlying documentation, mainly charge slips and invoices, which Otto had examined during his field audit. Rau submitted the matter to the attorney general's office, and several weeks later a deputy attorney general secured warrants to search the record storage areas of both the nursing home and the Ruud residence located across the street. The search commenced at approximately 6:30 p.m., August 28, 1975.

Evidence obtained in the search was submitted to the grand jury. Based upon the 1973-74 Rule 49 cost report, the grand jury indicted Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., for presenting false demand for audit to a public body. For the excess reimbursement paid by DPW in reliance upon the false report to the nursing home between March 1, 1975, and August 31, 1975, the grand jury indicted them for theft of more than $2,500.

According to the state's evidence, defendants' 1973-74 Rule 49 report included a total of $40,049.36 in expenses improperly claimed as patient-care costs. This resulted in overpayment of $15,723.68 between March 1, 1975, and August 31, 1975. The expenses challenged by the state included $24,050 in salaries paid by the nursing home during the 1973-74 fiscal year to the four Ruud children. The payroll ledger reflected that the children worked 80 hours biweekly, although, unlike other payroll employees,

they kept no time cards and worked no regular shifts for these salaries.[3] One daughter receiving a salary for full-time nursing home employment was a full-time student at Macalester College in St. Paul during the year at issue. Of the two sons, one was in the United States Air Force and stationed in Rapid City, South Dakota. The other owned and operated a farm outside Willmar. Additional expenses challenged by the state included $1,582.24 recorded as "laundry and linens" on the nursing home books and paid to a Minneapolis department store for clothing and personal items purchased by the two Ruud daughters for their own use; over $2,000 paid in salaries to two housekeepers, one at the Ruud residence and one at a lake cabin; a $50.86 high school class ring for one daughter and a $275 accuquartz watch for Royce Ruud, both recorded on the nursing home books as "general and administration" costs. Defendants did not deny that some expenses were improperly included on the Rule 49 report, but they attributed this to "sloppy" bookkeeping, not an intent to steal.

The issues raised by defendants on their consolidated appeals are:

1. Was there probable cause for the issuance of a search warrant, and did the warrant state with sufficient particularity the things to be seized?

2. Was Robert Rau properly allowed to testify as an expert on personal expenses and to submit into evidence a chart listing the alleged personal expenses?

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[3]One daughter, a high school student, received a second payroll check for a part-time job as a hostess at the nursing home. For the hours worked at this job, as many as 27 during the 2-week pay period, she punched a timeclock. The state did not challenge the salary paid her for these hours and included in the Rule 49 report.

3. Did the trial court err in its evidentiary rulings admitting Spreigl evidence without cautionary instructions; admitting the affidavit of Norma Ruud; admitting payroll checks signed by Royce Ruud and properly included as Rule 49 costs; and excluding defendants' evidence of prior law-abiding acts?

4. Did the trial court err by refusing to instruct the jury on those parts of Rule 49 which were applicable to defendants' theories of defense?

5. Were defendants denied their right to a fair and impartial jury by the method of jury selection?

6. Does the evidence support the conviction of Royce Ruud?

1. Defendants argue that evidence seized during the course of the search is inadmissible because the affidavits in support of the warrants fail to state reliable facts upon which a finding of probable cause may be based and because the warrant failed to particularly describe the items to be seized. Defendants' arguments are without merit.

The leading case on the probable cause requirement is *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed.2d 723 (1964). Its two-pronged test for determining whether an affidavit based upon hearsay information may support a search warrant has been applied frequently by this court. The affidavit must contain sufficient underlying facts so that the magistrate may draw his own conclusions as to whether probable cause exists to believe that a crime has been committed and as to whether the affiant's source of those facts is credible or his information reliable.

In the present case, Robert Rau, DPW audit director of the audit division, prepared the affidavits. Each affidavit states that, pursuant to statutory authority, Rau and DPW auditor Otto commenced an audit of the cost data required by Rule 49 and submitted by Willmar Nursing Home for the fiscal years ending July 31, 1972, and July 31, 1973. Based upon Otto's preliminary investigation of numerous business records of the Willmar Nursing Home and interviews with an unnamed former nursing home employee and a former employee who worked in the home of Norma and Royce Ruud, Rau concluded that the costs reported included goods and services purchased for the personal benefit of the Ruud family; e.g., groceries, a rifle and shells, and repairs on the Ruud residence and farm. The affidavit states sufficient underlying facts to support the magistrate's conclusion that probable cause exists to believe a crime had been committed. Furthermore, the source of the facts is reliable. Otto is a named informant and is employed by the state precisely for the purpose of performing audits. "Unlike an informant whose information may come from his own criminal background or even complicity in the particular event reported, * * * [he] may be presumed reliable." *State v. Cox*, 294 Minn. 252, 254, note 1, 200 N.W. 2d 305, 307 (1972); accord, *State v. Mazzadra*, 28 Conn. Sup. 252, 258 A. 2d 310 (1969). There is no reason to suspect Otto's motives. See, *State v. Mollberg*, Minn., 245 N.W. 2d 463 (1976). On the contrary, his professional reputation depends upon the accuracy of his observations. Finally, Otto obtained his information in a reliable manner from firsthand observation while in the course of his employment.

Whether or not the former employees of the nursing

home or the Ruud residence whom Otto interviewed can be considered reliable sources presents a more difficult question. They desired not to be named, and as former employees they might have a motive to lie or exaggerate. See, *State v. Lindquist*, 295 Minn. 398, 205 N.W. 2d 333 (1973); *State v. Cvar*, 293 Minn. 439, 196 N.W. 2d 624 (1972). Their reliability is not critical, however, because the affidavit states probable cause without their additional information.

Defendants argue that the search warrants authorized a general, exploratory search in contravention of the Fourth Amendment requirement that a warrant "particularly" described the place to be searched and the things to be seized. See, *State v. Streitz*, Minn., 258 N.W. 2d 768 (filed September 23, 1977); *Andresen v. Maryland*, 427 U.S. 463, 96 S. Ct. 2737, 49 L.Ed.2d 627 (1976). The search warrants, one for the offices and record storage places at the residence and one for the offices and record storage places at the nursing home, each directed seizure of the following property:

(1) All records and documents evidencing purchases of goods and services made by any past or present agent, employee, or owner of Willmar Nursing Home, Inc., 500 Russell Street, Willmar, Minnesota, since August 1, 1971, to the present.

(2) All records and documents evidencing the identity of the person(s) responsible for making purchases of goods and services for Willmar Nursing Home since August 1, 1971, to the present.

(3) All records and documents indicating the identity

of any person(s) who made a purchase of goods or services in the name or on the account of Willmar Nursing Home since August 1, 1971, to the present.

(4) All records and documents indicating the identity of the person(s) who received goods or services purchased in the name or on the account of Willmar Nursing Home since August 1, 1971, to the present.

(5) All records and documents of cash or credit receipts and disbursements received or made by Willmar Nursing Home, its agents, employees, or owners since August 1, 1971, to the present, including but not limited to canceled checks.

(6) All bookkeeping and accounting records of Willmar Nursing Home which relate to the information required or provided upon each Rule 49 report or attachments submitted to the Minnesota Department of Public Welfare or Kandiyohi County Welfare Department by Willmar Nursing Home since August 1, 1971, to the present.

(7) All records of inventory and cost analysis prepared or generated in relation to the determination of expenses incident to patient care at Willmar Nursing Home since August 1, 1971, to the present.

(8) All records, correspondence, and other documents indicating who had knowledge of person(s) purchasing and/or receiving goods and services obtained in the name or on the account of Willmar Nursing Home since August 1, 1971, to the present.

(9) All records, correspondence, memoranda, and

other writings or things indicating who wrongfully received goods, services, or funds from Willmar Nursing Home since August 1, 1971, to the present.

(10) All records, agreements, or other writings which identify the person(s) who have conspired together to obtain funds from a public body through fraud, deception, misrepresentation, or theft since August 1971, to the present.

(11) All records, agreements, or other writings which identify the person(s) who have a direct interest in the assets and liabilities of Willmar Nursing Home.

(12) All audits, bookkeeping reports, and ledgers showing any debits or credits of Willmar Nursing Home.

(13) All bookkeeping, accounting, tax, payroll, and other records and documents identifying recipients and amounts of wages paid by Royce or Norma Ruud, or any partnership or corporation controlled by the same, for services performed for the benefit of any properties owned or managed by said persons other than the Willmar Nursing Home.[4]

Defendants contend that the warrants were "vague to the nth degree" even though the state knew exactly what documents it wanted, and that the warrants listed "every conceivable business and cost-related accounting record in a nursing home."

[4]Subsequent to the search, defendants commenced a civil suit to enjoin the state from presenting the seized records to the grand jury and to mandate their return. The court ordered the return of items seized under paragraph 13 of the warrant and reserved the issue of the legality of the search for determination at the omnibus hearing. At the omnibus hearing, the court upheld the search as being "valid and legal in all respects."

A warrant can only be as specific as the nature of the materials sought will allow. See, *James v. United States,* 416 F. 2d 467 (5 Cir. 1969). The costs which must be disclosed in a Rule 49 report involve virtually all of a nursing home's financial records from the reporting year or years at issue. In arguing that the state knew exactly what documentation it needed, defendants refer to a list of 50 payees and another list of 14 vendors[5] titled "Unresolved Expenditures Indicating Rule 49 violations" which Otto had drawn up on the basis of his investigation of the nursing home's records. Defendants do not suggest how a warrant might be drafted to cover the books and records in which these items are listed as well as the underlying documentation showing the purchases represented thereby, their source and destination. Even if such a warrant could be drafted, the time and expertise necessary to execute it would impose an unreasonable burden. See, *United States v. Scharfman,* 448 F. 2d 1352 (2 Cir. 1971). Furthermore, this list is not exhaustive of the materials which the state legitimately sought, e.g., documents which disclose the identity of persons authorizing or making such expenditures.

The case of *VonderAhe v. Howland,* 508 F. 2d 364 (9 Cir. 1974), upon which defendants place great reliance, is inapposite. There, an IRS audit of a dentist's account books showed his income tax returns for the 2 years in question to be accurate. The IRS subsequently learned from a former employee that the dentist kept a second set of records. Upon the basis of this information, the IRS re-

[5]The term "vendors" is used to mean all persons, including employees, or businesses, who were paid by the nursing home for goods or services.

quested and was issued a search warrant which covered all of his financial records, including those previously examined and found proper. The court held that the warrant was too broad. Here, the nursing home records were not so easily separable. And even those records evidencing costs validly included in the Rule 49 cost report were properly within the reach of the warrant in so far as they provided evidence of such facts as who authorized purchases and who had knowledge of nursing home finances, both relevant to proof of intent. Defendants' argument that less intrusive means should be pursued before resort to a search warrant is without merit and supported by the authority cited.

As for defendants' argument that the search itself was impermissibly general because it covered the entire house, there is no evidence that the person who looked in each room did more than verify that all "offices and record storage places" had been identified.

2. Robert Rau was the state's first witness at trial. As audit director of the audit division of DPW, he supervises 10 or 11 auditors and various other clerical employees. The audit division is charged with the responsibility of performing "desk audits" on cost reports from nursing homes and intermediate care facilities for the mentally retarded. As director, Rau reviews all Rule 49 rate determinations. The division also performs field audits of these nursing homes and care facilities.

Rau testified about the history of the promulgation of Rule 49; the purpose of the rate and the way in which it is figured; the reporting and verification procedures; the time at which the rate becomes effective; and the methods

by which payment is made by DPW to the nursing home applicant. Rau identified the 1972-73 and 1973-74 Rule 49 reports submitted by defendant Willmar Nursing Home, which were then admitted into evidence.

Rau was asked to describe the field audit undertaken of Willmar Nursing Home, the expenditures which Otto identified as questionable, and the attempts to obtain explanation of these expenditures from Norma Ruud. The affidavit signed by Norma, which purported to answer various of Otto's questions, was introduced into evidence. Rau then stated his opinion as an auditor, based upon receipts and invoices and other such underlying documentation, as to what each of the questioned purchases in fact represented. For instance, by matching up invoices and nursing home checks, he opined that the department store bill, which Norma had identified in her affidavit as representing a purchase of linens and upholstery material for recovering chairs used at the nursing home, in fact represented payment for such things as a handbag, billfold, small appliances, a girdle, one sweater, and slacks. Rau testified that these bills were paid with nursing home checks and were expenses included in the 1972-73 Rule 49 report.

Rau's testimony then turned to the Rule 49 report for the indictment year, 1973-74. The state introduced some 27 exhibits, each consisting of an envelope containing numerous invoices and sales and charge slips from a particular vendor. Rau was asked where the documents came from (most were seized in the search of the nursing home records and the others were obtained from vendors); what they represented (invoices, sales and charge slips, canceled

checks, ledgers); what purchases were represented by them; whether they were included in the Rule 49 report; in what cost category they were reported; whether in his opinion they represented purchases of goods and services related to patient care; and what amount was improperly included on the report for each of the items which in his opinion was not related to patient care. Following testimony by Rau, the vendors testified. They identified their own charge slips and invoices, their endorsements on nursing home checks, and the products or services for which they were paid.

Defendants argue that Rau is not qualified to testify as an expert in rendering an opinion that reported costs were not patient-related because he is not a certified public accountant and has absolutely no training in patient care or medicine. With respect to Rau's opinions based upon a knowledge of auditing procedures or accounting principles, defendants' argument is specious. Rau has an undergraduate degree in business administration. Since graduating he has completed five courses in accounting, in addition to many years of work experience in the accounting and auditing field. As audit director, he supervises other state-employed auditors and reviews audits prepared by them. What is more, he helped to draft Rule 49.

As to Rau's medical or patient care qualifications, whether or not a particular expense for an item purchased for and used by the patients was a reasonable, treatment-related expense is not at issue in the case. The items which Rau disallowed were items which in his opinion, based upon the nature of the item purchased, the person who charged it, and the place it was delivered, were purchased

for the personal use of the defendants and their children. Therefore, the issue is whether or not goods and services purchased by the nursing home were actually used by the nursing home. Defendants did not contest the impropriety of many expenses included on the Rule 49 cost report; e.g., a rifle and shells purchased by one son. The majority of expenses which they did seek to justify, such as the cost of a desk built in the Ruud residence and used by Norma in the performance of nursing home paperwork, were not medical in nature.

Defendants argue that many of Rau's opinions were based upon commonsense and therefore invaded the province of the jury. Defendants failed to make this objection at trial and may not raise it now. Similarly, although defendants argue to the contrary, the record does not clearly reveal an objection on the grounds of hearsay.

Defendants raise one argument, relative to the admission of state's exhibit 48, which merits some discussion. Exhibit 48 is a large chart, approximately 6 feet square, which purports to summarize Rau's testimony of alleged personal expenses. The chart lists each vendor from whom defendants purchased goods or services which, according to the state, were improperly included on the Rule 49 cost report because unrelated to patient care. The chart lists the amounts paid to each vendor and indicates how the amounts were recorded on the nursing home's books. It shows the total amount of challenged expenses for which the nursing home sought reimbursement, $40,049.36, and the total resultant overpayment to the nursing home during the 6 months covered by the indictment, $15,723.68. The chart carries the title "SUMMARY OF

WELFARE REIMBURSEMENT FOR PERSONAL EXPENDITURE."

The issue is whether admission of this exhibit, and particularly its inclusion among those exhibits which the jury took with it during deliberation, was prejudicial. The problem was described by the United States Supreme Court in *Holland v. United States*, 348 U.S. 121, 127, 75 S. Ct. 127, 131, 99 L.Ed. 150, 160 (1954), a tax case, as follows:

> "* * * There is a great danger that the jury may assume that once the Government has established the figures in its net worth computations, the crime of tax evasion automatically follows. The possibility of this increases where the jury, without guarding instructions, is allowed to take into the jury room the various charts summarizing the computations; bare figures have a way of acquiring an existence of their own, independent of the evidence which gave rise to them."

The admission of such charts is, of course, addressed to the discretion of the trial court. As a general rule, such charts are admitted in long, complicated cases where they accurately represent the proponent's testimony or theory and where the court determines that such would be an aid to the jury and instructs the jury to use the exhibit only as an aid and not as the evidence itself. Annotation, 16 A.L.R. Fed. 542.

Defendants did not request a limiting instruction, and the trial court did not give one. Neither did defendants object specifically to the title on the chart, although

they now cite authority condemning the use of such headings. In the absence of a request for an instruction and an objection to the title, we hold that the admission of the exhibit was not reversible error in this case. The chart was helpful as an accurate summary of the extensive testimony of Rau and some 29 vendors. The jury also had as exhibits the primary evidence summarized by the chart, invoices, charge slips, and canceled checks which were contained in large manila envelopes, one envelope per vendor. These were easily accessible for the jury to peruse to see for itself the nature of the items charged to the nursing home.

Defendants assign numerous errors in the trial court's evidentiary rulings. Upon a thorough review of the record, we find the argument that defendants were prejudiced by the introduction of substantial Spreigl evidence in the absence of proper procedural safeguards to be without merit. The state gave notice prior to the omnibus hearing of its intent to introduce evidence of other crimes as required by Rule 7.02, Rules of Criminal Procedure. We recently held that in the absence of an objection or request, the remaining Spreigl-Billstrom[6] procedures are not mandatory. *State v. Forsman*, Minn. — N.W. 2d — (filed September 2, 1977). In the present case, at the time evidence was admitted, the trial court gave a cautionary instruction where requested and proper.[7] The

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[6]*State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965); *State v. Billstrom*, 276 Minn. 174, 149 N.W.2d 281 (1967).

[7]The 1972-73 Rule 49 cost report and the affidavit signed by Norma Ruud were properly admitted without the requested cautionary instruction. The mere filing of a report is not a crime. Likewise with the affidavit, its admission was not tantamount to evidence of a prior crime in the absence of evidence that any of the statements

court also included a cautionary instruction in its final charge to the jury.

Defendants' argument that the affidavit signed by Norma Ruud was a coerced confession and inadmissible is without merit. DPW audit director Rau sent a list of questions to Norma, requesting her to respond by affidavit. Contemporaneously, he sent copies of the list to Norma's attorney and to her accountant. A letter acknowledging receipt of the questions was sent to Rau by Norma's attorney several days later. In preparing her answers, Norma consulted with her attorney as well as with her accountant. The answers were sent to Rau under cover letter from Norma's attorney. The record does not reveal that there were at any time threats of economic sanction nor that the civil audit was a pretext to obtain information to be used in a contemplated criminal prosecution, as defendants contend. Norma Ruud was not in custody nor was she being interrogated by police when she answered the questions asked by Rau. She had not been "deprived of [her] freedom in any significant way." *Beckwith v. United States*, 425 U.S. 341, 344, 96 S. Ct. 1612, 1616, 48 L.Ed.2d 1, 6 (1976). Hence, *Miranda* warnings were not necessary and the affidavit was properly admitted.

Royce Ruud argues that the admission of pay-

made therein were false or concealed items improperly reported. Before any such evidence was introduced, the court gave a limiting instruction. Defendants now complain of the trial court's mistaken reference in that instruction to the 1974-75 cost report as the one for which defendants were indicted rather than the 1973-74 report. This sort of misstatement, which neither defense nor the state noticed or objected to at the time, could not be assigned as error on appeal if it had been given as part of the final charge. Rule 26.03, subd. 18, Rules of Criminal Procedure. The same principle should apply here.

roll checks signed by him was prejudicial and without probative value. These checks represented expenses properly included in the Rule 49 report. Since Royce Ruud did not sign the 1973-74 Rule 49 report, the state's case against him necessarily rested on the theory that he aided and abetted the filing of the false claim and the theft effected thereby. The state offered the checks to show Royce Ruud's involvement in financial affairs of the corporation, and they were probative in that respect. That the evidence was prejudicial in the sense that it implicated defendant in the crime charged against him is not a cognizable objection.

We find no error in the court's exclusion of evidence which defendants characterize as "exculpatory evidence of prior law abiding acts."[8] The trial court did allow substantial amounts of testimony. Much of what it excluded was merely cumulative. Other evidence, e. g., personal checks written in 1968, were properly excluded as too remote. One check written by Royce Ruud to the nursing home was excluded because he could not explain why the check was paid. Another example raised by defendants, e. g., that the Willmar Nursing Home's reimbursement rate was lowest of the five nursing homes in Kandiyohi County, was properly excluded as irrelevant.

4. Defendants assign numerous errors with respect to the trial court's instructions, two of which merit discussion. Defendants argue that the court erred in refusing to give the following requested instruction:

[8]The exclusion of an accountant's testimony relative to expenses claimed on the 1974-75 Rule 49 cost report and not on the 1973-74 indictment year cost report will be discussed below in the context of the trial court's refusal to instruct that no theft occurred if, because certain proper expenses were not claimed, no overpayment resulted despite the false claims made.

"Therefore, even if you find that the defendants herein have filed a false and fraudulent Rule 49 cost report herein based on the law in these instructions, you may not convict defendants of the crimes charged unless the filing of such reports has resulted in an overpayment. On determining whether or not an overpayment has been made you may take into consideration costs which defendants could have reported but did not report on their Rule 49 cost report."

Assuming this requested instruction fairly states the law, the trial court nevertheless did not err in refusing to so instruct because defendants introduced no evidence on which the jury could evaluate the value of the goods and services allegedly donated to the nursing home without reimbursement. Norma Ruud testified to a number of items given by her to the nursing home, but she placed no value on them.[9] Her attorney later sought to introduce testimony of the accountant hired by the nursing home to prepare its 1974-75 Rule 49 cost report. Counsel for Norma Ruud and the nursing home[10] asked the witness whether he had included in the 1974-75 report property which had been purchased prior to August 1, 1974, but had not been included in the 1973-74 report. The court sustained the state's objection to that question. This evidence was properly excluded in so far as it was offered to

[9]The donated items consisted of furniture and household appliances which had been used in her house before it was transferred to the nursing home. However, Norma Ruud purchased new replacements with nursing home checks for most of the transferred items, including a washer and dryer, a refrigerator, television sets, dressers, a coffee table and parsons tables.

[10]One attorney represented Norma Ruud and the nursing home. A second represented Royce Ruud and the nursing home.

show that defendants intended not to steal but only to come out even: They claimed some improper expenses and did not claim some proper ones. Defendants may and did testify to such a state of mind; the accountant, hired after the fact, may not. With respect to the no-overpayment-in-fact theory, whatever defendants' intent, the offer of proof does not indicate that the accountant would have estimated appropriate depreciation deductions.[11] The accountant was allowed to testify that the 1973-74 report did not include depreciation on the Ruuds' residence nor on a lake cabin owned by the nursing home. Again, no values were assigned. To have instructed the jury as requested would have invited the jury to speculate.[12]

Defendants also requested the following instruction:

"The Defendants have claimed that they relied on their accountants in preparing the cost report. This goes to the question of whether any expenses which might have been incorrectly reported were willfully or intentionally reported incorrectly.

"If you find that the Defendants in good faith relied upon their accountants to inform them which costs and expenses could not legitimately be reported, then the Defendants would not be intentionally or willfully doing wrong in submitting the cost report to the Department of Public Welfare. These questions of reliance are matters for you to determine."

[11]Any attempt to ascribe value to the property would have presented foundation problems although the state did not object on those grounds.

[12]Counsel for Royce Ruud and the nursing home, moreover, conceded in his opening remarks to the jury that defendants owed some money to the state.

They argue that by refusing to so instruct the jury, the trial court in effect directed a verdict against them on that defense. The trial court did not include such an instruction "because [he] assumed that it would be argued that they relied, and that because they relied there was no intent. [He] assumed that to be the argument, but [he] didn't think an instruction would be appropriate." Upon being asked by defense counsel whether they could then "freely argue it," the court stated: "No question about that."

It is beyond dispute that a party is entitled to an instruction on his theory of the case if there is evidence to support it. The court need not give the instruction as requested by the party if it determines that the substance of that request is contained in the court's charge. In this case, the court gave repeated instructions with respect to intent. It did not mention reliance on an accountant, however, although the bulk of the argument of one of the two defense counsel was devoted to the issue of intent and particularly to the issue of reliance.

No Minnesota case discusses this defense. Numerous Federal cases in the context of prosecutions for tax evasion discuss the defense of reliance on an accountant or on an attorney. At least one holds that a general instruction on intent is not sufficient where good faith reliance on tax counsel is an issue and an instruction thereon was requested. *Bursten v. United States*, 395 F. 2d 976 (5 Cir. 1968). Another held that the substance of the request had been given in the court's repeated emphasis of the government's burden to prove willful intent to evade taxes. *United States v. Stone*, 431 F. 2d 1286 (5

Cir. 1970) (reliance on accountant). Under all of the cases, however, the instruction as requested by defendants is not proper because the defense is not available unless one has fully and fairly disclosed to the professional relied upon all the relevant information, and that element must be included in the charge. *United States v. Cox*, 348 F. 2d 294 (6 Cir. 1965); *United States v. Stone, supra.*

Defendants did not fully and fairly disclose to the accountants relied upon all the relevant information. Accountant Oiva Penttila testified that the Rule 49 cost report was prepared from the nursing home's books. The nursing home carried expenses on its books according to categories which corresponded to the Rule 49 expense categories, e. g., dietary, nursing, etc. The amounts recorded on the Rule 49 report derived from the nursing home's general ledgers on which the various expenses were listed. According to Penttila, preparation of a Rule 49 report normally does not involve systematic review of the underlying documentation for the amounts recorded on the general ledger. It is not directed at determining whether an expenditure reported in the general ledger of the nursing home as the purchase of food, for instance, in fact represented such a purchase.

There is no evidence that either Norma or Royce Ruud advised Penttila that personal expenses were intermingled with nursing home expenses and that they expected him to identify them and prevent their transfer from the ledger to the report. Norma testified that she never informed the accountant that $2,935 in nursing home checks paid to three of her children represented gifts to her children and should not be included in the Rule 49 report. One of Penttila's associates, concerned with potential adverse income

tax consequences to the closely held corporation because of the many salaries paid to family members, asked Norma about the salaries paid to the children to insure that they had performed the services for which they were being paid. Norma answered that the children had worked the hours for which they were paid. Norma testified that when she authorized the salaries for her four children she took into account the years they had worked for the nursing home without compensation. Yet there is no evidence that she ever asked the accountants whether it was permissible for Rule 49 purposes for her to do so.

Norma's major theory of defense other than reliance on her accountant was that she charged some personal items to the nursing home because in her own mind she offset those against nursing home items which she purchased with her own funds. Again there is no evidence that she ever asked the accountants whether this practice was permissible for Rule 49 purposes.

Royce Ruud knew that his air fare to Rapid City to visit his son was paid through nursing home checks but he never told the accountant to adjust these expenses out of the Rule 49 cost report.

From these examples, it is apparent that an instruction on the defense of reliance would not have been proper. In any event, the instructions given did not foreclose defendants from arguing the issue and defendants took full advantage of the opportunity.

5. Defendants contend that they are entitled to a new trial because the jury was "systematically skewed." Of the 57 members of the jury panel who were supposed to be available for voir dire, 19 did not appear and their names

were not put in the box by the clerk; 2 others were excused by the court. The parties did not learn of the small pool out of which they were drawing names until after they had seated 10 jurors. At this point, defendants had exercised few of their challenges. Nevertheless, they proposed, in effect, to begin the selection anew. The court rejected their proposal and apparently suggested instead that they choose the remaining jurors from the total panel then available. The court denied defendants' subsequent motion for mistrial. Defendants state that of the 21 who were supposed to be part of the pool but were not, 12 were businessmen or salespersons, 5 were farmers, and 4 were housewives or retired. Eighteen of them were men and 3 were women. Of the group from which the jury was chosen, there were few business or salespersons, an unusual preponderance of females, "and a less than what it should be preponderance of farmers who might be available to sit on the jury."

Defendants are not entitled to a jury of a particular composition, nor to one that represents accurately the composition of the community. *State v. Holty*, Minn., 238 N.W. 2d 615 (1976). There was nothing systematic about this exclusion; the composition of the pool was fortuitous. Defendants have shown no prejudice.

6. Finally, defendant Royce Ruud argues that the evidence does not support his conviction. The evidence that he aided and abetted the filing of the false claim and the theft effected thereby was necessarily circumstantial. Royce knew the basic operation of the Rule 49 report. He knew that, generally, the higher the costs reported, the higher the reimbursement rate. He had signed the Rule 49 report of the previous year. He had signed some of the

nursing home checks for the purchase of goods and services unrelated to patient care. He signed some of the Ruud children's payroll checks.

The evidence supports the conclusion that he knew that personal expenses paid with nursing home funds would be absorbed by the Rule 49 report unless they were detected and removed. When testifying about one personal purchase with nursing home funds, he remembered calling the accountant to tell him to adjust it out of the nursing home books. With regard to other personal items, he testified that he relied upon the accountant to find those, although he did not call them to the accountant's attention. With respect to others, he said he did not know they were included in the Rule 49 report.

The jury simply did not believe Royce Ruud's testimony that he paid no attention to the source of funds for new furniture in his home, new color television sets, new clothes, and a $275 accuquartz watch for himself. Viewed most favorably to the verdict, the evidence sustains Royce Ruud's conviction, as well as the conviction of the other defendants.

Affirmed.

WAHL, J., not having been a member of this court at the time of the argument and submission, took no part in the consideration or decision of this case.

STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT
ST. PAUL, MINN.

December 2, 1977

State of Minnesota,

Respondent,

vs.

Norma Ruud and Willmar Nursing Home,

Appellants,

Royce Ruud and Willmar Nursing Home,

Appellants.

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petitions for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

JOHN McCARTHY
Clerk Supreme Court

MANDATE

THE STATE OF MINNESOTA

To the Honorable Judge and Officers of the District Court within and for the County of Kandiyohi Greeting:

WHEREAS, Lately in your Court, in action therein pending entitled State of Minnesota, Plaintiff, vs. Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., a Minnesota corporation, Defendants, certain orders and a judgment were entered therein May 17, and July 6, 1976 from which action of your Court an appeal therafter was taken to this Court;

AND WHEREAS, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the orders and judgment of the Court below herein appealed from, be, and the same hereby is, in all things affirmed and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this remittitur.

NOW THEREFORE, This MANDATE is to you directed and certified, to inform you of these proceedings in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith REMANDED to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

WITNESS, The Honorable ROBERT J. SHERAN Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this December 2, 1977.

JOHN McCARTHY
Clerk of the Supreme Court
By /s/ WAYNE TSCHIMPERLE
Deputy

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the orders and judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Kandiyohi be and the same hereby is in all things affirmed.

Dated and Signed December 2, 1977.

BY THE COURT

Attest:
JOHN McCARTHY
Clerk

MINNESOTA STATUTES, 1974—THE CRIMINAL CODE. VOL. 40

609.05 *Liability for crimes of another*

Subdivision 1. A person is criminally liable for a crime committed by another if he intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Subd. 2. A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the

intended crime if reasonably foreseeable by him as a probable consequence of committing or attempting to commit the crime intended.

Subd. 3. A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons his purpose and makes a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed.

Subd. 4. A person liable under this section may be charged with and convicted of the crime although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act. Laws 1963, c. 753.

609.465 *Presenting false claims to public officer or body*

Whoever, with intent to defraud, presents a claim or demand, which to his knowledge is false in whole or in part, for audit, allowance or payment to a public officer or body authorized to make such audit, allowance or payment is guilty of an attempt to commit theft of public funds and may be sentenced accordingly. Laws 1963, c. 753.

609.52 *Theft*

. . .

Subd. 2. Acts constituting theft. Whoever does any of following commits theft and may be sentenced as provided in subdivision 3:

. . .

(3) Obtains for himself or another the possession, custody, or title to property of a third person by intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(a) The issuance of a check, draft, or order for the payment of money or the delivery of property knowing that he is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) A promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence; or

(c) The unauthorized use of a credit card, credit plate, charge plate, or other identification device issued by an organization to a person for use in purchasing goods on credit;

MINNESOTA STATUTES 1974, SEARCHES AND SEIZURES, VOL. 41.

626.05 *Definitions*

Subdivision 1. A search warrant is an order in writing in the name of the state, signed by a court of record or by a justice of the peace in any county having no municipal court other than a probate court, directed to a peace officer, commanding him to make such search as may be authorized by law and to hold any item seized, subject to the order of a court.

Subd. 2. The term "peace officer" as used in sections 626.04 to 626.17 means a sheriff, deputy sheriff, policeman, constable or university of Minnesota peace officer. Laws 1963, c. 849, §3. Amended by Laws 1976, c. 2, §154; Laws 1977, c. 82, §4.

626.06 *Jurisdiction to Issue*

Search warrants may be issued by any court of record or by a justice of the peace in any county having no municipal court other than a probate court having jurisdiction in the area wherein the place to be searched is located. Laws 1963, c. 849, §4.

626.07 *Grounds for Issuance*

A search warrant may be issued upon any of the following grounds:

(1) The property or things were stolen or embezzled;

(2) The property or things were used as the means of committing a crime;

(3) The possession of the property or things constitutes a crime;

(4) The property or things are in the possession of any person with the intent to use them as a means of committing a crime, or the property or things so intended to be used are in the possession of another to whom they have been delivered for the purpose of concealing them or preventing their being discovered;

(5) The property or things to be seized consist of any item or constitute any evidence which tends to show a crime

has been committed, or tends to show that a particular person has committed a crime.

The property or things described in this section may be taken pursuant to the warrant from any place, or from any person in whose possession they may be. Laws 1963, c. 849, §5.

626.08 *Probable cause*

A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property or thing to be seized, and particularly describing the place to be searched. Laws 1963, c. 849, §6.

626.09 *Examination of parties making request*

The court or justice of the peace may, before issuing the warrant, examine on oath the person seeking the warrant and any witnesses he may produce, and must take his affidavit or their affidavits in writing, and cause same to be subscribed by the party or parties making same. Laws 1963, c. 849, §7.

626.10 *Affidavit, content*

The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. Laws 1963, c. 849, §8.

626.11 *Issuances of warrant*

If the court or justice of the peace is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must

issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property or things specified, and to retain such property or things in his custody subject to order of the court or justice of the peace issuing the warrant. Laws 1963, c. 849, §9.

626.12 *Applicants, names on warrant*

The warrant, in addition, shall contain the names of the persons presenting affidavits in support of the application, and the grounds for its issuance. Laws 1963, c. 849, §10.

626.13 *Service, persons making*

A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. Laws 1963, c. 849, §11.

626.14 *Time of service*

A search warrant may be served only in the daytime unless the court or justice of the peace determines on the basis of facts stated in the affidavits that a nighttime search is necessary to prevent the loss, destruction, or removal of the objects of the search. The search warrant shall state that it may be served only in the daytime unless a nighttime search is so authorized. Laws 1963, c. 849, §12.

626.15 *Execution and return of warrant, time*

A search warrant must be executed and returned to the court or justice of the peace who issued it within ten

days after its date; after the expiration of this time the warrant, unless executed, is void. Laws 1963, c. 849, §13.

626.16 *Delivery of copy of warrant and receipt*

When the officer conducts the search he must give a copy of the warrant and, when property or things are taken, a receipt therefor (specifying it in detail) to the person in whose possession the premises or the property or things taken were found; or, in the absence of any person, he must leave such copy of the warrant and receipt in the place where the property or things were found. Such delivery of a copy of the warrant shall constitute service. Laws 1963, c. 849, §14.

626.17 *Return and inventory*

The officer must forthwith return the warrant to the court or justice of the peace and deliver to him a written inventory of the property or things taken, verified by the certificate of the officer at the foot of the inventory. Laws 1963, c. 849, §15.

626.21 *Return of property and suppression of evidence*

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the municipal court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized, or (2) the property was illegally seized without warrant, or (3) the warrant is insufficient on its face, or (4) the property seized is not that described in the warrant,

or (5) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (6) the warrant was illegally executed, or (7) the warrant was improvidently issued. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

Laws 1963, c. 850, §1.

MINNESOTA RULES OF CRIMINAL PROCEDURE

RULE 11. OMNIBUS HEARING IN FELONY AND GROSS MISDEMEANOR CASES.

If the defendant does not plead guilty at his initial appearance before the district court following a complaint, a hearing shall be held as follows:

11.01 *Reference to County or Municipal Court*

The hearing shall be held in the district court in the judicial district wherein the alleged offense was committed. In cases wherein it is mutually agreed between the district court and the county or municipal court, or when ordered by the Supreme Court, the hearing may be referred to the county court or municipal court of the county wherein the alleged offense was committed.

11.02 *Hearing on Evidentiary Issues*

Subd. 1. *Evidence.* If the defendant or prosecution has demanded a hearing on either of the issues specified by Rule 8.03, the court shall hear and determine them upon such evidence as may be offered by the prosecution or the defense.

Subd. 2. *Cross-Examination.* Upon such hearing, the defendant and the prosecution may cross examine the other's witnesses.

11.03 *Motions*

The court shall hear and determine all motions made by the defendant or prosecution, including a motion that there is an insufficient showing of probable cause to believe that the defendant committed the offense charged in the complaint, and receive such evidence as may be offered in support or opposition. Each party may cross-examine any witnesses produced by the other. A finding by the court of probable cause shall be based upon the entire record including reliable hearsay in whole or in part. Evidence considered on the issue of probable cause shall be subject to the requirements of Rule 18.06, subd. 1.

1104 *Other Issues*

The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose.

11.05 *Amendment of Complaint*

The complaint may be amended as prescribed by these rules.

11.06 *Pleas*

If the hearing is held in the district court, the defendant as provided by Rule 15.07 may be permitted to plead to the offense charged in the complaint or to a lesser included offense, or an offense of lesser degree. If the hearing is held in a county or municipal court, the defendant may be permitted to enter a plea of guilty to a misdemeanor including ordinance violations in lieu of the offense charged in the complaint unless the prosecuting attorney objects. In that event, a new complaint shall be signed by the prosecuting attorney and filed in the county or municipal court. The complaint shall be in the form prescribed by Rule 2.01 except that it need not be made upon oath and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided.

11.07 *Continuances; Determination of Issues*

The court may continue the hearing or any part thereof from time to time as may be necessary. All issues presented at the Omnibus Hearing shall be determined before trial. When issues are determined, the court shall make appropriate findings in writing or orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing.

11.08 *Record*

Subd. 1. *Reporter.* The proceedings shall be taken by a reporter.

Subd. 2. *Transcript.* Upon timely application to the reporter, counsel for the defendant or for the prosecution shall be furnished with a transcript of the proceedings upon the following conditions:

(a) If the transcript is to be furnished to defense counsel, the costs thereof shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit that he is unable to pay or secure the costs and the court orders that he be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The prosecution shall be furnished with the transcript without prepayment of costs.

(c) When a transcript is furnished to counsel, a copy shall be filed with the clerk of the court.

Subd. 3. *Filing.* The record and all papers and exhibits in the proceeding shall be filed or placed in the custody of the clerk of the court. Upon order of the court any exhibit may be returned to the party producing it.

11.09 *Review*

Subd. 1. *Upon the Record.* In the event the hearing is held before a county or municipal court, the findings and determinations on the issues presented shall be subject to review by the district court before trial upon the

record made before the county or municipal court, provided notice specifying the issues to be reviewed is served by the defendant or prosecution upon opposing counsel within five (5) days from the date of the determination of such issues by the county or municipal court and is filed in the office of the clerk of the district court within five (5) days after such service. The district court may at any time before trial on its own motion review the findings and determinations.

Subd. 2. *Action of District Court.* Upon review the district court shall not set aside, amend or modify any of the findings or determinations of the county or municipal court unless it finds them to be clearly erroneous or contrary to law.

Subd. 3. *Time for Determination.* The district court's decision upon review shall be made and entered at least four days before the date of trial.

11.10 *Plea; Trial Date*

If the defendant is not discharged he shall plead to the complaint or be given additional time within which to plead. If he pleads not guilty, a trial date shall then be set. A defendant shall be tried as soon as possible after entry of a not guilty plea. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, the trial shall be commenced within sixty (60) days from the date of the demand unless good cause is shown by the prosecution or the defendant why he should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea.

11.11 *Exclusion of Witnesses*

Before or during any Omnibus or other pretrial hearing or proceeding, witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court.

Supreme Court, U. S.
FILED
APR 3 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977
No. 77-1222

NORMA RUUD, ROYCE RUUD, and
WILLMAR NURSING HOME, INC.,
Petitioner,

vs.

STATE OF MINNESOTA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

BRIEF OF RESPONDENT STATE OF MINNESOTA IN OPPOSITION

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IN THE

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vs.

STATE OF MINNESOTA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

BRIEF OF RESPONDENT STATE OF MINNESOTA IN OPPOSITION

This brief is submitted by Respondent State of Minnesota in opposition to the Petition for a Writ of Certiorari to the Supreme Court of Minnesota.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota is reported at —— Minn. ——, 259 N.W.2d 567 (1977) (Appendix A of Petition).

JURISDICTION

Petitioners assert that the jurisdiction of the United States Supreme Court is invoked under United States Code, Title 28, Sec. 1257, 62 Stat. 929.[1]

QUESTIONS PRESENTED

1. Did the search warrants meet the particularity requirements of the Fourth Amendment?
2. Was the search legally executed in a manner consistent with the scope of the warrants?
3. Were the affidavits in support of the search warrants sufficient to support a finding of probable cause?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional and statutory provisions involved are set forth in the Petition. However, Respondent asserts that Section I of Amendment XIV of the United States Constitution is not relevant to the issues presented in the Petition.

---

[1] It appears that the Petition mistakenly cites Title 18 (Petition 2).

STATEMENT

Petitioner, Willmar Nursing Home, Inc., is a nursing home located in Willmar, Minnesota . The majority stockholders and officers of the corporation are a husband and wife, Norma and Royce Ruud, who also serve as administrators of the home. One major source of revenue for the Willmar Nursing Home over the past several years has been welfare reimbursement for services provided for welfare eligible patients through the Medical Assistance (Medicaid) program.

The Medical Assistance program is authorized and generally governed by Title XIX of the United States Social Security Act and Minnesota Statutes Chapter 256B, and it is administered in Minnesota by the Minnesota Department of Public Welfare (hereinafter DPW).

The "price" which DPW will pay a nursing home for services rendered to welfare residents is determined through application of Minn. Rule DPW 49. Rule 49, which was promulgated in 1972, establishes what is known as a "cost-based" system of reimbursement. Under this system a nursing home's per diem welfare rates are based primarily upon the legitimate costs of operation which the home incurred during its preceding fiscal period. DPW obtains this information annually from participating nursing homes in the form of a standardized report, known as a Rule 49 Cost Report (hereinafter Cost Report), which is essentially a welfare rate application.

As part of its administrative responsibilities for the Medical Assistance program, DPW sets nursing home rates following desk audits of Cost Reports, and it periodically performs more exhaustive review of nursing homes' reports through field audits of their books and records. One purpose of the field audits is to assure that homes do not violate the strict require-

ments that only *bona fide* costs of nursing care be included in the Cost Reports.

In late 1974, Robert Rau, DPW Audit Director, assigned DPW auditor Raymond Otto to conduct a field audit at the Willmar Nursing Home. On completion of the audit Otto prepared a written report which he submitted to his supervisor, Rau. The report revealed a large volume of apparently inappropriate expenditures. At the suggestion of the Ruuds' accountant, Rau submitted a set of written questions to the Ruuds regarding the doubtful costs. The answers were submitted by Mrs. Ruud in affidavit form.

After reviewing Mrs. Ruud's affidavit, Rau and Otto both concluded that Mrs. Ruud was attempting to deceive DPW because her written answers contradicted certain facts which were previously ascertained during the field audit. They brought the matter to the attention of the Attorney General's office, which subsequently contacted the Kandiyohi County Attorney concerning possible criminal action.

On August 28, 1975, two search warrants were granted by Kandiyohi County Judge Allen Buchanan, authorizing the search of the record storage areas of Willmar Nursing Home located at the nursing home and the Ruuds' personal residence across the street. The warrants further authorized the seizure of the books and records of the nursing home discovered in the search. Sworn affidavits in support of the warrants were submitted by Robert Rau. Rau's affidavits relied on the information reported to him by Otto. Judge Buchanan also conversed at length with Mr. Rau, and put him under oath for at least half of his testimony.

Following the granting of the search warrants, which authorized Deputy Attorney General Thomas Fabel, Special Assistant Attorney General Barbara Gill, Willmar police officers

Richard James and John Kappers, and Rau and Otto to participate in the search, the party proceeded to the named addresses and executed the warrants at about 6:30 p.m. Fabel, Rau and Officer James first served the warrant for the residence on Royce Ruud. Fabel walked through the house with Mr. Ruud to ascertain the whereabouts of offices and record storage places. Fabel and James then served the warrant for the nursing home. When the search was completed about eight boxes of records were seized.

Following the search and seizure the Ruuds brought a motion for return of the property and suppression of its use as evidence and filed suit to enjoin the State from presenting the seized evidence to the Grand Jury. The district court (Thomas J. Stahler, J.) granted a temporary restraining order in the latter suit on September 19, 1975, and heard both the motion for suppression and the motion for temporary injunction on September 23, 1975. The court denied both motions, but ordered the State to return to the Ruuds all items seized pursuant to specification No. 13 of the search warrant. The State complied with Judge Stahler's Order.

On September 25, the State began presenting the case to the Kandiyohi County Grand Jury. On September 30 the Grand Jury returned an Indictment charging Royce Ruud, Norma Ruud, and Willmar Nursing Home, Inc., with two counts of theft and one count of filing false claims through the filing of a false Rule 49 Cost Report for fiscal year 1973-74. The Indictment was later amended to include only one count of theft.

Following trial all three defendants were convicted as charged. They subsequently appealed to the Minnesota Supreme Court which affirmed the convictions. Petitioners' motions for rehearing in the state court were denied.

ARGUMENT

I. THE DECISION OF THE MINNESOTA SUPREME COURT UPHOLDING THE SEARCH AND SEIZURE IS IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

The sole issue before this Court is whether the Minnesota Supreme Court correctly upheld the search and seizure in this case.

The Minnesota Supreme Court rejected Petitioners' assertion that the search warrants were general warrants in contravention of the Fourth Amendment requirement that a search warrant must particularly describe the place to be searched and the things to be seized. The Court correctly held that a warrant can only be as specific as the nature of the materials sought will allow. In applying this standard to the facts of this case, the Court found that all the financial records of the nursing home for the years at issue were relevant to a charge of welfare fraud and thus were properly within the scope of the warrant. The determination of the Minnesota Supreme Court is fully in accord with the applicable decisions of this Court. See, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), *Stanford v. Texas*, 379 U.S. 476 (1965), *Marron v. United States*, 275 U.S. 192 (1927).

Petitioner further sought a determination in the Minnesota Supreme Court that the search itself was impermissibly general and went beyond the scope of the warrant because it covered the entire house. The search warrants authorized the search of the "offices and record storage places" of Petitioners' businesses located in their family home and in their nursing home. The Minnesota Supreme Court correctly held that the searching officers were within the scope of the warrant when they walked through the house and looked in the various rooms in an effort to identify all "offices and record storage areas." Petitioners fail to identify any applicable decision of this Court which the state court decision contravenes.

In their Petition to this Court, Petitioners raise other complaints about the execution of the search (Petition, 13 and 14). Those issues were not addressed by the state court and therefore cannot be considered before this Court. *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

The state court also determined that the affidavits in support of the search warrants stated sufficient reliable facts upon which a finding of probable cause could be based. In reaching this decision the Court applied the two-prong test which this Court prescribed in *Aguilar v. Texas*, 378 U.S. 108 (1964), for application when an affidavit in support of a search warrant is based on hearsay. Essentially that case held that where the affidavit in support of an application for search warrant is based on hearsay the magistrate applied to must be informed of: (1) some of the underlying circumstances from which the informant drew his conclusions; and, (2) the underlying circumstances from which the affiant concluded that the informant was reliable and credible.

In preparing the affidavits the affiant, Rau, the Director of the Audit Division of the Minnesota Department of Public Welfare relied on Otto, his subordinate who had actually conducted the audit. Thus, the affidavit was based in large part on hearsay. The state court determined that the affidavits, in detailing an authorized state audit of petitioners' nursing home and the results of that audit, stated sufficient under-

lying facts to support the magistrate's conclusion that probable cause existed to believe a crime had been committed. This determination squarely meets the first requirement of the *Aguilar* test.

The state court also determined that the informant, the auditor Otto, was reliable because he was a state employee who gained his information from firsthand observation while in the course of his employment. In reaching this decision the state court correctly applied the second half of the *Aguilar* test.

Petitioners assert that the judicial officer issued the search warrants on the basis of unsworn testimony (Petition, 14). Again, this issue was not decided by the state supreme court and cannot be raised before this Court. *Cardinale v. Louisiana, supra.*

The Minnesota Supreme Court properly upheld the search and seizure in this case after careful analysis of Petitioners' allegations and appropriate application of the relevant law. As there is no error in the state court's decision, this case should not be reviewed by this court.

II. THE DECISION OF THE MINNESOTA SUPREME COURT DOES NOT RAISE A NEW ISSUE OR ONE OF SUFFICIENT IMPORTANCE TO REQUIRE REVIEW BY THE SUPREME COURT.

In its decision upholding Petitioners' conviction, the Minnesota Supreme Court merely followed the guidelines as set out by the relevant decisions on search and seizure. The state court was not required to develop a new principle of law but only to apply principles previously enunciated by this Court.

Furthermore, the facts of this case are not of such a new, unique or unusual nature as to warrant review of the state court decision by this Court. The Minnesota Supreme Court properly affirmed Petitioners' convictions. That decision does not raise a new issue or one of sufficient importance to require review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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